



PHD

## Defining the nameless: Police constructions of mental disorder

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**DEFINING THE NAMELESS:  
POLICE CONSTRUCTIONS OF MENTAL DISORDER**

submitted by Hillary Bradshaw  
for the degree of PhD  
at the University of Bath  
1999

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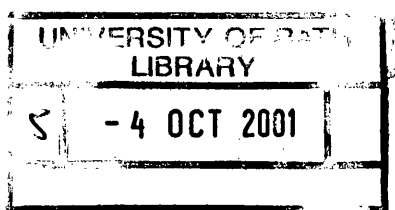
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## **ABSTRACT**

Police are regularly required to deal with lawbreakers whose behaviour may, within medical, juridical or common sense (organisational) discourse (or a mix of all three) be seen as constitutive of some type of mental disorder. Yet, the process whereby police officers construct lawbreakers as mentally disordered cannot be explained wholly by reference to those three discourses. Medical discourse is concerned with the extent to which abnormal behaviour is symptomatic of some physiological condition which requires therapeutic treatment; juridical discourse is concerned with the extent to which mental disorder may impair criminal responsibility and therefore mitigate punishment; and commonsense (organisational) discourse (theorised here from a symbolic interactionist perspective) does not usually allow for explicit recognition of either the organisational systemicities of class, race, and gender typifications, or of the situational specifics of risk and danger awareness.

This thesis shows how police draw upon all three discourses to create a fourth, new and distinct, discourse which is functional to the demands of the police (professional and bureaucratic) organisation insofar as it enables the effective police management of (medical) morality, (legal) justice and (organisational) risk.

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# INTRODUCTION

## 1. ORIGINS OF THE THESIS

This thesis theorises and investigates the process by which police officers come to define lawbreakers as mentally disordered.

People who break the law and who suffer from mental disorder are conceived of within formal juridical discourses and practices as an exception to the legal and procedural rules which regulate the attribution of criminal responsibility and which regulate the punishment of the criminally responsible.

The criminal law understands mental disorder in terms of a mitigation of criminal responsibility. A central tenet of the criminal law is that people who suffer from a mental disorder and who break the law on account of that disorder do not deserve to be held criminally responsible for their lawbreaking. Where lawbreakers' mental health is disturbed to such a significant degree as to render their minds (permanently or temporarily) so under the control of their 'illness', their actions are considered to be no longer willed and voluntary.

Criminal justice understands mental disorder as providing a mitigation of punishment. A central tenet of criminal justice is that lawbreakers who are found to be criminally responsible for their actions deserve the punishment that is appropriate and consequent upon a judicial finding of their guilt. Where lawbreakers suffer some degree of mental ill-health, punishment can be rendered ineffectual. If and whether the rationale of punishment is intended primarily as retribution, as deterrence, as reform or as denunciation it follows that it should be administered only where lawbreakers are in a state of mind which is capable of being receptive to those aims. Indeed, punishment can be positively detrimental if it is administered in conditions (particularly of imprisonment) in which it is inappropriate and unsuitable to address treatment needs and which consequently serve to exacerbate rather than remedy lawbreakers' disturbed mental health.

The current position within criminal justice in respect of the disposal of mentally disordered lawbreakers remains that stated by Stephen Dorrell, then Parliamentary Secretary for Health in November 1990 (NACRO, 1993:7).

You will be well aware of the basic principle of Government policy today. It is that, wherever possible, mentally disordered offenders should receive care and treatment from the health and social services, rather than the criminal justice system.

Mitigations of responsibility and of punishment, however, cannot be effected by those who operate criminal law and justice alone. Such outcomes are dependent, in the first instance, upon mutual agreement as to the fact of lawbreakers' mental disorder between representatives of criminal law and criminal justice (lawyers, judiciary, juries and so on) and of the medical and related professions (police surgeons, psychiatrists, social workers and so on). Notwithstanding that the behaviour of some lawbreakers is so abnormal that 'madness' would seem to be its only explanation, the institutions of criminal law and criminal justice do not and cannot 'know' whether or not such lawbreakers are suffering from a condition that would be understood by doctors as a psychiatric category of mental disorder (see Appendix I). It is members of the medical profession alone who have the authority to 'know' about mental disorder and to diagnose lawbreakers' abnormal and out of the ordinary behaviour as symptomatic of some or other physiological condition. And since they bear no professional clinical responsibility for, or authority over, the mentally disordered, representatives of criminal justice are not merely powerless to order that abnormally behaved lawbreakers who appear to them to be mentally disordered be diagnosed as mentally disordered. They are equally powerless to order that those who appear to them to be mentally disordered or that those who are diagnosed by doctors as mentally disordered receive the medical treatment that they so clearly deserve. Doctors do not inevitably follow up their diagnoses of mental disorder with treatment. There may be no suitable treatment regime, whether or not involving individual, group or drug therapies, at the psychiatrists' disposal. Or, to put it another way, the mentally disordered lawbreaker may possess neither the will to be treated nor suffer from the kind of mental disorder that responds to current treatments.

Nor is it the case that treatment is available even for the treatable. Contemporary practices which generally promote the care and rehabilitation of the mentally disordered while maintaining their independence and freedom from coercion and restraint have limited the number of secure institutional provisions for those who may pose the risk of harm to themselves or to others. While criminal justice is concerned not to punish mentally disordered lawbreakers who are not fit to be, and do not deserve to be, punished, the overriding concern is that of safeguarding the interests of others; of past, present and potential victims of lawbreakers whose mental disorder may, if not cause, then pre-dispose them to offend. Psychiatrists are not always able to satisfy criminal justice needs by offering treatment in conditions of appropriate security and with adequate supervision (particularly



out-patient treatment). As a consequence, and in the absence of any alternative and rehabilitative form of disposal, lawbreakers for whom treatment is preferred have to be punished.

Therefore a 'mismatch' can and does occur in the process by which lawbreakers who behave in abnormal ways come to be defined (by representatives of the criminal justice system) and diagnosed (by members of the medical profession); firstly with regard to the kinds of behaviours engaged in by lawbreakers that constitute legal and medical mental disorder and secondly with regard to the means of dealing with lawbreakers defined and diagnosed as mentally disordered.

Crucially, therefore, and for the purposes of this thesis, a 'mismatch' does not simply occur at the level of formal juridical and formal medical understandings of mental disorder nor between legal and medical experts who put these formal knowledges into practice. It further occurs between the formal and the 'commonsense', between mental disorder as it is 'known' in the formal discourse and practice of criminal law and justice and mental disorder as it is 'known' to practitioners within criminal law and justice organisations.

This thesis is concerned to examine and reveal 'commonsense knowledge' about mentally disordered lawbreakers as it is possessed by police officers. Their capacity to criminalise or medicalise lawbreakers' behaviours makes police officers unique among practitioners of criminal justice and affords them the potential to exert a considerable impact over the eventual outcome for lawbreakers. Dealing with lawbreakers who behave in unexpected, extra-ordinary and abnormal ways is a part of a police officer's job both outside (on the streets, in domestic situations and so on) and inside (during the course of detention and questioning) the police station. On the one hand, police officers are authorised (by the provisions of the Police and Criminal Evidence Act 1984 and the Mental Health Act 1983) to take formal action to bring lawbreakers' mental disorder to the attention of a doctor and so they are required to define lawbreakers' behaviour as mentally disordered. They are further authorised (through pre-charge and pre-trial consultation processes) to bring lawbreakers' mental disorder to the attention of prosecutors, defence lawyers and the courts by way of verbal and written reports. On the other hand, police officers are authorised (by the breadth of their discretion in relation to the detention and charge of lawbreakers) to take no formal action at all in respect of lawbreakers whom they define as mentally disordered. In exercising their discretion in this way, they act as if they were, at one and the same time, members of the medical profession (in diagnosing mental disorder without reference to a

doctor) and representatives of criminal justice (in the mitigation of responsibility and punishment on the basis of that disorder which lies within the provenance of lawyers, judges and jurors).

Although police officers are able to 'professionalise' their definitions of mental disorder by talking of mentally disordered lawbreakers with reference to medical terminology (see Appendix I), they have no medical authority or expertise in respect of the mentally disordered. Similarly, police officers are able to talk about the legal effects of mental disorder upon responsibility and punishment by reference to the defences of, *inter alia*, insanity and diminished responsibility and the various mitigations of punishment to treatment. The understanding that police officers do possess about mentally disordered lawbreakers is 'professional' and 'expert' only in so far as it is shaped by their role in relation to lawbreakers, in relation to mentally disordered lawbreakers, in relation to their organisation and in relation to the wider criminal justice system. The commonsense that must be investigated in this thesis, therefore, is not 'what everybody knows about mentally disordered lawbreakers' but rather more specifically 'what every police officers knows about mentally disordered lawbreakers'.

Further, in the absence of any medical authority or expertise in respect of the mentally disordered, police officers are unable to invoke any formal rules which would impose upon doctors either police definitions of lawbreakers as mentally disordered or their wish that such lawbreakers should receive treatment. In the absence of any legal authority or expertise in respect of mentally disordered lawbreakers, police officers are similarly unable to invoke any formal rules which would impose upon others involved in the process of criminal justice a verdict which wholly or partially acquits lawbreakers of guilt or a sentence which prefers treatment over punishment.

A 'mismatch' occurs where doctors and those involved in the criminal justice process do not concur in officers definitions of mental disorder. Where these others cannot give police officers what they want in respect of the lawbreakers whom they have defined as mentally disordered and whom they desire to be treated, it is informal rather than formal means that must be relied upon to bring about the desired outcome. This thesis, therefore, is concerned to theorise and explain police officers' commonsense about mentally disordered lawbreakers and the ways in which officers (attempt to ensure) that their commonsense prevails.

## **2. THE AIMS OF THE STUDY**

- (i) To identify and examine the sources of police knowledge about mentally disordered lawbreakers.
- (ii) To identify and explain how this knowledge is applied in order to define behaviour that is significant to police officers of lawbreakers' mental disorder.
- (iii) To identify the formal rules of law and procedure invoked by police officers in their dealings with lawbreakers whom they define as mentally disordered and to examine the ways in which these rules are utilised in order to bring about police officers' desired outcome.
- (iv) To identify the informal rules and working practices invoked by police officers in their dealings with lawbreakers whom they define as mentally disordered and to examine the ways in which these rules and practices are utilised in order to bring about their desired outcome.

## **3. THE STRUCTURE OF THE THESIS**

It is fundamental to this thesis that there is no one behaviour that is essentially indicative of mental disorder. Consequently, Chapter 1 adopts an interactionist perspective on mental disorder and, in reviewing the work of, inter alia, George Herbert Mead and Erving Goffman, explains the process by which the behaviour of one party comes to be defined by another as abnormal and extra-ordinary.

Police officers are agents of a criminal justice system that is concerned with the doing of legal justice and the securing of lawbreakers just deserts. Chapter 2, therefore, considers the interplay of legal justice, moral justice and mental disorder through an examination of legal and judicial pronouncements about the effects of mental disorder upon the notion of criminal responsibility. The chapter further examines the concepts of risk and danger as they impact upon lawbreakers' moral and legal responsibility and consequently upon their being defined as mentally disordered.

Chapter 3 identifies and explains the formal rules of law and procedure contained in the Police and Criminal Evidence Act 1984 and the Mental Health Act 1983 which empower and regulate police dealings with mentally disordered lawbreakers. In explicating the nature of formal and informal rules and rule usage, the chapter further lays out the foundations of a framework within which the actions and the justifications of police officers' actions in respect of those lawbreakers whom they define as mentally disordered may be

understood.

Chapter 4 analyses the process by which police officers come to define lawbreakers who behave in extra-ordinary ways as mentally disordered. The chapter sets this definitional process within the organisational context of policing and develops the concept of police officers securing (or attempting to secure) lawbreakers' 'moral just deserts' in order to explain why police officers may come to define behaviour as extra-ordinary and to define extra-ordinarily behaved people as mentally disordered.

The organisational context of policing is further utilised in Chapter 5 in order to develop the concept of police officers 'getting into trouble' as an integral part of the definitional process. This concept acts as a counter-point to that of 'moral just deserts'. It is employed in the analysis in order to provide an explanation of the use to which formal rules of law and procedure and informal rules and working practices are put as police officers (attempt to) ensure that 'mentally disordered' lawbreakers receive their 'moral just deserts' while simultaneously managing the risks that are created for police officers and others by lawbreakers who behave in extra-ordinary and 'mentally disordered' ways.

#### **4. THE THESIS**

Where police officers define lawbreakers as mentally disordered it is a means by which they (attempt to) ensure that both formal (legal) and informal (moral) justice is done.

- (i) Police officers make moral distinctions between lawbreakers who behave in extra-ordinary ways and who they come to define as mentally disordered.
- (ii) Police officers are concerned that the legal outcome of the criminal justice process is that which these mentally disordered lawbreakers morally deserve.
- (iii) The formal rules of criminal law and procedure do not make moral distinctions, creating the risk that lawbreakers will not receive their just deserts.
- (iv) Police officers' constructions of extra-ordinarily behaved lawbreakers as mentally disordered are intended to secure moral justice by legal means.

##### **1. Police officers are under an organisational imperative to**

- (i) make sense of situations involving lawbreakers whose abnormal and ambiguous (extra-ordinary) behaviour breaches the rules which regulate everyday police interaction with law breakers.

- (ii) determine whether extra-ordinarily behaved lawbreakers fall within the jurisdiction of the criminal law and criminal justice system.
- (iii) determine whether extra-ordinarily behaved lawbreakers fall within the jurisdiction of the medical profession.
- (iii) determine the appropriate rules of law and procedure that must be invoked in respect of extra-ordinarily behaved lawbreakers.

Police practices by which officers make sense of the extra-ordinary are reflective of bureaucratic practices which attempt to impose order on all that falls within its administrative ambit. These in turn are reflective of modernisation and its practices which seek to create a world in which the likelihood of future events can be predicted on the basis of past experience and according to rational principles.

2. Lawbreakers do not behave in ways which are essentially and always indicative to police officers of mental disorder. Mental disorder is the product of an encounter between police officer and lawbreaker and is signified to the former by extra-ordinary behaviour on the part of the latter. 'Mental disorder' is a name given by police officers to explain lawbreakers' behaviour

- (i) that is extra-ordinary in all of the circumstances in which it takes place  
(i.e. where it subverts the social rules and expectations which govern everyday interaction between police officers and lawbreakers)
- and
- (ii) to which cannot be attributed any other explanation  
(i.e. which cannot be normalised as being typical of any other deviant or non-deviant behaviour normally engaged in by lawbreakers)

3. 'Mental disorder' bears no universal meaning.

- (i) Mental disorder is characterised by pre-modern conceptions of madness which conceive of the mad as irrational, irresponsible, unpredictable and consequently dangerous people who have no control over their actions. The incapacitation of such people is thereby justified.
- (ii) Mental disorder is characterised as sickness which brings about a legitimated excusal from everyday social obligations to those who are defined as 'sick'. Their obligation is

rather to take steps to get well and so the treatment of such people is justified.

- (iii) Mental disorder is characterised as a moral state which excuses social rulebreaking. All members of society are under a moral obligation to observe the social rules by which its members regulate their conduct. Breaches of these rules are presumed to be willed and, in the absence of innocent explanation, are met with moral censure.
- (iv) Mental disorder is characterised as wholly or partially negating lawbreakers' criminal responsibility. The presumption that all breaches of the criminal law are willed and that lawbreakers are knowing and consequently responsible for their lawbreaking is rebutted by evidence that a lawbreaker's mental disorder at the time of the lawbreaking was such as to impute a causative link between the mental condition and the criminal behaviour, thereby eroding voluntariness.
- (v) Mental disorder is characterised as a mitigation of punishment to treatment which rebuts the presumption that punishment is consequent upon a finding of guilt and so functions to exempt mentally disordered lawbreakers from any legal requirement to suffer any punitive consequences for their actions.

4. Commonsense judgements, legal verdicts and medical diagnoses of mental disorder are capable of bringing about particular effects for extra-ordinarily behaved lawbreakers.

- (i) the status of 'mental disorder' symbolises a complete or partial absence of moral and/or legal responsibility for one's actions.
- (ii) The medical condition of 'mental disorder' can and does require treatment which may be
  - (a) minimally coercive and invasive and beneficial in its effects.
  - (b) coercive, indeterminate, institutionalised and punitive in its effects.

5. Police officers purposively define extra-ordinarily behaved lawbreakers as mentally disordered in order

- (i) to mitigate the severity of the criminal law for those lawbreakers whom officers believe to be morally innocent but legally guilty.
- (ii) to subject to indeterminate incapacitation those lawbreakers whom officers believe to be dangerous and to whom the criminal justice system cannot offer effective and indefinite control.
- (iii) to punish those whom officers believe to be morally guilty and capable of feigning

mental disorder in order to avoid punishment.

The possibility of individualised justice is afforded to officers by way of their discretion. However, discretion 'does not constitute a realm of *free*, arbitrary action' (Weber, 1948 (1991 ed).:220) and so individualised justice for lawbreakers is only individualised in so far as it is exercised according to the norms of the police organisation.

6. Police officers are unable to directly and formally bring about the legal and medical effects of mental disorder but are authorised only to act in accordance with the formal rules of criminal and procedural law which regulate police dealings with mentally disordered lawbreakers. Legal and medical outcomes are consequently brought about by informal means which are constituted by officers' organisational and operational working rules and practices.

7. When officers (attempt to) do moral justice by informal means these means must be (or appear to be) in accordance with and be successfully justified with reference to a known rule and ultimately to a legal rule. Officers thereby avoid the risk of censure from individuals and/or bodies within and outwith the police organisation and the wider criminal justice system.

Therefore,

the process by which police officers come to define lawbreakers as mentally disordered is one which they perceive to be the effective management of (medical) morality, (legal) justice and (organisational) risk. This process, doing moral justice, is one of balancing the risk that lawbreakers will fail to receive their just deserts with the risk that, in securing (attempting to secure) these just deserts, officers will be subjected to legal and/or moral censure.

- (i) The definitional process is one of NAMING lawbreakers as mentally disordered (i.e. assigning extra-ordinary lawbreakers into moral categories by invoking extra-legal rules) and TREATING lawbreakers as mentally disordered (i.e. by invoking the formal rules of law that are particular to mentally disordered lawbreakers).

This process is not a sequential one wherein the naming and treating of extra-ordinarily behaved lawbreakers as mentally disordered are a series of processes which lie in a fixed and

linear progression from one to the other. Officers do not first of all determine the excusability or punishability of lawbreakers, then go on to determine their deservedness (or otherwise) of mental disorder and then proceed to treat lawbreakers as mentally disordered according to some utilitarian approach by which officers avoid censure. Officers can and do take formal action first and subsequently come to define lawbreakers as deserving or undeserving of the effects of mental disorder. Conversely, to define lawbreakers as deserving or undeserving of mental disorder does not inevitably guarantee that officers are able to treat them as mentally disordered or otherwise. The process, therefore, constitutes a coherent whole.

(Ch. 4 and Ch.5)

- (ii) Police officers normalise ALL lawbreakers into categories which are organised according to knowledges that are produced and reproduced within the police organisation.

Since it is the job of police officers to deal with people who breach legal and/or social rules in ways which may cause immediate harm to themselves and to the persons or property of others, officers swiftly assess the situations and the lawbreakers involved by assigning them a category that enables them to take the course of action that is the most 'professionally' appropriate in all of the circumstances. The 'typical' characteristics of lawbreakers are inculcated through organisational training and professional experience and constitute police commonsense about the ways in which normal lawbreakers and normal mentally disordered lawbreakers can and do behave. Officers are enabled to avert the risk of compromising their professional authority before the public and before members of their own and other criminal justice organisations.

(Ch. 4, I (i)(ii); II (i)(ii)(iii))

- (iii) These categories are moral ones and are organised according to the moral innocence or the moral guilt of lawbreakers.

Lawbreakers who observe the extra-legal rules and norms of social conduct approved by police officers are deemed by them to be 'respectable' while lawbreakers who subvert these rules and norms are deemed to be 'disreputable'. There is no one symbol that is essentially significant of 'respectability' and 'disreputability'. 'Respectability' and 'disreputability' are concerned with but not confined to, inter alia, the performance of social and gender roles



and with respect for and resistance to officers' legal authority. Officers explain all present and future behaviour and extra-ordinary (irrational, unexpected, unpredictable) behaviour in terms of these assigned moral categories and thereby avert the risk that they will mistake the 'fraudulently' mentally disordered from the 'genuinely' mentally disordered and, in turn, compromise their professional authority before others.

(Ch. 4, I (ii); II (i)(ii)(iii); III; IV (i)(ii); V)

(iv) Definitions of mental disorder made in the present are intended by police officers to bring about future effects. Officers, therefore, pre-empt the outcome of the criminal justice process in respect of lawbreakers who behave in extra-ordinary ways and name them as mentally disordered in order to avoid the risk that they will be subjected to undeserved conviction and/or punishment.

Respectable lawbreakers who are understood by police officers to be morally innocent deserve to be named as the type of lawbreakers who are not wholly criminally responsible for their lawbreaking and who deserve acquittal and/or treatment. Police officers name these lawbreakers as mentally disordered in order to avoid the risk that they should be dealt with by the criminal justice system as if they were 'normal' lawbreakers. Lawbreakers (whether respectable or disreputable) whose behaviour is perceived by officers to be sufficiently intolerable in terms of its persistent and low-level nature or in terms of the threat of present and future harm to self or others that officers deem them to be dangerous deserve indeterminate incapacitation. In naming these lawbreakers as mentally disordered officers intend to avert the risk that their lawbreaking will be repeated.

In order that moral categories be justified as psychiatric conditions from which clinical diagnoses and treatment can flow, officers cite as symptomatic of mental disorder lawbreakers' circumstances which are related, inter alia, to misuse of alcohol and proscribed drugs, to social problems and to the extra-ordinariness and dangerousness of lawbreaking itself. This is intended to avoid the risk that doctors will fail to diagnose extra-ordinarily behaved lawbreakers as mentally disordered and treatable.

In order that moral categories be justified as legal categories from which acquittal and/or mitigation of punishment may flow, officers establish a causative link between the lawbreaking and the 'medical' conditions over which lawbreakers have no control. This is intended to avoid the risk that other members of the criminal justice system will define extra-ordinarily behaved lawbreakers as criminally responsible and therefore punishable.

(Ch. 4, II (ii); III; IV (i)(ii); V (i))

- (v) Police officers pre-empt legal verdicts and medical diagnoses by avoiding the formal courses of action in respect of extra-ordinarily behaved lawbreakers which would draw them to the attention of doctors and agents of the criminal justice system. This is intended to avert the risks that are attendant upon opening up officers' actions to the scrutiny of others in that should these others fail to concur in officers' definitions of lawbreakers as mentally disordered, these lawbreakers will not receive their just deserts and officers will be potentially subjected to censure.

The principle of just deserts as it is understood by officers requires that those who deserve to benefit from the symbolic and functional effects of mental disorder should do so while those who do not deserve to benefit should not. The practice of just deserts allows officers to divert extra-ordinarily behaved lawbreakers who deserve to be mentally disordered away from the criminal justice system while formally processing extra-ordinarily behaved lawbreakers who deserve punishment.

Dispensing individualised justice by informal means both averts a risk (since activating bureaucratic mechanisms in respect of ALL extra-ordinarily behaved lawbreakers is practically and economically unviable) and creates a risk (since ANY extra-ordinarily behaved lawbreakers may require medical and judicial attention) that officers will be subjected to the censure of their colleagues and others of the criminal justice system.

(Ch. 4, II (iii)(b); IV (i)(ii); Ch. 5, I (i)(ii))

- (vi) In order to avert the risk of censure police officers treat extra-ordinarily behaved lawbreakers as mentally disordered by invoking the rules of law and procedure that regulate police dealings with mentally disordered lawbreakers.

To put the principle of just deserts fully into practice and to avoid taking formal action in respect of all lawbreakers who deserve to be mentally disordered is to create the risk that any harm to persons and/or property which is resultant from untreated mental ill-health and/or disregarded lawbreaking is attributed to police inaction. This is to invite public, organisational and ultimately legal censure. The risk of censure for inaction increases in proportion to such factors as the perceived gravity of the lawbreaking, its impact upon any victims and the likelihood of its recommitment.

On the other hand, and since the formal rules of law and procedure make no moral

distinctions between mentally disordered lawbreakers, police officers are compelled to treat as mentally disordered the morally guilty whose extra-ordinary behaviour they are unable to normalise into any other deviant or non-deviant category. This creates the risk that those

who do not deserve to 'get away with it' will do so.

(Ch. 4, III; IV (ii); V (i); Ch.5, I (i)(ii); II (i)(ii)(iii)(iv))

(vii) Since the formal action that police officers take jeopardises just deserts by producing categories of extra-ordinarily behaved lawbreakers who are not (morally) what they would appear (legally) to be, officers utilise working rules in order to present lawbreakers as they 'really' are.

The constraints upon formal action compel officers to treat those who deserve to be mentally disordered as if they were 'really' criminals (where lawbreaking is such that officers risk censure if they do not arrest, detain, charge) and those who deserve to be punished as if they were 'really' mentally disordered (where behaviour is sufficiently 'sick' that officers risk censure if they do not seek medical assessment).

When the former have to be criminalised (because officers have failed to secure a psychiatric diagnosis followed by an immediate diversion into treatment) and where the latter have to be medicalised (because officers fail to prevent a psychiatric diagnosis of mental disorder) officers attempt to secure an outcome that reflects lawbreakers' 'real' (and moral) status.

To others of the criminal justice system who have an indirect authority over the verdict (i.e. superior officers, defence and prosecuting lawyers) officers present the lawbreaking of the morally innocent as an unlikely to be repeated result of a medical condition which requires the least invasive of psychiatric treatment; and the lawbreaking of the 'dangerous' and the morally guilty as intentional and the result of a medical condition which manifests itself in actual and potentially harmful ways, which is likely to recur and which demands the most coercive and restrictive of psychiatric treatments.

Officers tell the 'truth' about lawbreakers to others in verbal and documentary reports and engage in working practices intended to secure admissions from lawbreakers in which they tell the 'truth' about themselves.

This creates the risk that any evidence submitted in the course of criminal proceedings and which appears to have been obtained in breach of proper procedures will be tainted.

(Ch. 5, I (i)(b); (ii); II (i)(ii)(iii)(iv))

(viii) In order to avert the risk of legal and organisational censure that would follow if officers were to appear to have secured moral justice by legally unjust means, officers afford legal justice to those who deserve to be mentally disordered and afford every appearance of legal justice to those who do not.

Officers are censured (by colleagues, by superiors, by others of the criminal justice system) not only where they fail to successfully justify their actions according to a known rule and ultimately to a legal rule but also where they are found to be responsible for any adverse consequences of their formal or informal actions in respect of extra-ordinarily behaved lawbreakers.

All lawbreakers whom officers treat as mentally disordered must be afforded the procedural safeguards to which mentally disordered lawbreakers are legally entitled (inter alia, the presence of an appropriate adult and legal adviser during detention). Since officers cannot justify their arbitrary refusal, they render the safeguards for those whom they treat as mentally disordered as effective as they are legally intended to be (for example, by urging the presence of a legal adviser during interview) and render the safeguards for those who do not deserve to be mentally disordered as ineffective as it is legally possible for them to be (for example, by selecting the most inappropriate of appropriate adults to be present at the interview).

Facilitated by the hierarchical nature of the police organisation and the division of responsibility within and outwith the criminal justice system for people who break the law *and* who suffer mental health problems, officers are able to restrict their dealings with (and thereby their responsibility for) lawbreakers by doing no more than their job. In so doing they shift the responsibility for getting lawbreakers their legal and moral just deserts to others (doctors, families, colleagues and so on) who are formally or informally authorised to deal with mentally disordered lawbreakers.

Placing reliance on others to achieve moral justice by legal or extra-legal means creates the risk that these others will fail to do so and that the morally innocent will be punished, the morally guilty will not and the 'dangerous' will be inadequately and inappropriately controlled.

(Ch. 4, V (i); Ch.5, I (i)(ii); II (i)(ii)(iii)(iv))

- (ix) Police officers pre-empt the risk of moral censure should moral justice fail to be done by creating a distance between the outcome for mentally disordered lawbreakers and their own part in bringing about that outcome.

The conviction and/or punishment of those who deserve to be mentally disordered and the acquittal and/or treatment of those who do not is not a legal but rather a moral wrong. In spite of their best efforts, police officers are often ineffectual in their attempts to do moral justice by legal means and are aware that they bear a moral if not a legal responsibility where moral justice fails to be done.

If police officers are subjected to moral censure then it is because they are found to bear a moral responsibility for failing to get justice done. Therefore, they justify what they do (in their own 'best interests') on the grounds that they act in lawbreakers' 'best interests' and shift the moral responsibility for doing nothing or doing the wrong thing with mentally disordered lawbreakers to others within and outwith the criminal justice system. Moral distantiation is facilitated by the bureaucratic nature of the police and criminal justice organisations and the division of responsibility in respect to lawbreakers who are mentally disordered, particularly since the professional distance between police officers and these others means that they do not and cannot know what they are and are not authorised to do.

Distantiation creates the risk that the morally guilty who suffer from mental ill-health do not receive the treatment that they need (rather than deserve) and the morally innocent and the 'dangerous' get more than they deserve (in that treatment is potentially more punitive in its effects than punishment itself)

(Ch. 4, II (ii); Ch.5, I (i)(c)(d); (ii)(a)(c); II (iv))

## **PART ONE**

## **CHAPTER 1**

### **Making Sense of Non-Sense: A Symbolic Interactionist Approach to Police Definitions of Mental Disorder**

#### **INTRODUCTION**

When police officers define lawbreakers as mentally disordered it is because they do not know what else to call them. To be 'mad' or 'nuts' or 'loopy' or 'not the full shilling' or 'away with the fairies' are not some essential states that inevitably give rise to such nomenclature. Rather the naming of lawbreakers as 'mentally disordered' or as any of its more colloquial variations speaks as much about those who do the naming as those who are so named.

People are only able to function successfully as members of a society or social group if they understand what is going on. When behaviour defies their expectations of how particular people in particular social circumstances should behave they make sense of what is going on by giving the behaviour a name which expresses its 'extra-ordinariness'. It is widely understood that instances of extra-ordinary behaviour are the outward manifestations of a disturbed inner mental state and the descriptive terminology is that of 'madness' or 'mental disorder'. Moreover, this concept is not merely a product of contemporary Western society but rather one which transcends societal and cultural boundaries since

all societies seem to recognise certain forms of peculiar and unpredictable behaviour as madness (Conrad and Schneider,1980:38).

Mental disorder similarly announces its presence in groupings of people divided by national and ethnic boundaries and by, inter alia, class and gender. However, and as Conrad and Schneider (1980:5) point out, '(d)eviance is universal but there are no universal forms of deviance'. Behaviours are of infinite variety and yet none have any intrinsic qualities of abnormality or even normality.

What does not transcend these boundaries is the type of behaviour that amounts to madness - what is a minor infraction in one cultural set of circumstances may be a major breach in another (for example, hallucinations largely acceptable among the Eskimos of Siberia give cause for concern in Western societies (Conrad and Schneider,1980:38)). Nor is madness universally defined as a legal or medical problem, the latter concept of 'mental disorder' being a relatively recent product of Western society (Conrad and Schneider,1980:38).

Madness, is therefore, situational, emerging from a basic matrix of persons, places and times. These will be described throughout this thesis as 'contextual relativities' and comprise settings of historical and chronological time; of geographical location and space; and of the relevant characteristics of both the people who engage in the abnormal behaviour (e.g in relation to class and gender) and those who witness it (e.g in relation to their professional role). It is in this setting that an attribution of abnormality will be made by one individual upon another (Conrad and Schneider,1980; Hollingshead and Redlich in Spitzer and Denzin,1968). In other words, and as Rock (1973:66) states, deviance

is rarely an alien label which strikes the unprepared innocent from afar. The process of becoming deviant is a vastly more complex negotiation of identities and consequences which takes place in an endless series of mundane contexts.

People need not be engaged in any overwhelming event to become defined as mentally disordered but rather be the wrong people in the wrong place behaving in the wrong way at the wrong time and all of this in the course of everyday life.

What this chapter, therefore, sets out to examine and explain is the process (or mechanics) of interaction between police officers and rulebreakers which culminates in their being named as mentally disordered (or as something else entirely). In order to facilitate the review of the symbolic interactionist literature relevant to the analysis of this interaction while maintaining the complexity of the process of the attribution of deviance, the framework of this chapter is as follows -

## **I. THE ENCOUNTER**

which encompasses the contextual relativities of setting from which meanings are drawn.

## **II. THE PARTICIPANTS TO THE ENCOUNTER**

which encompasses the ways in which people interact with each other.

## **III. THE CONSTRUCTION OF MENTAL DISORDER**

which encompasses typifications of deviant behaviours as madness and as sickness

### **1. THE ENCOUNTER**

The theoretical (and empirical) locus of overt physical activity ('the dynamic, on-going social process' (Mead,1964:121)) and covert mental activity (the inner experience of the



individual - the inner phase of that process (Mead, 1964:121)) is the encounter. The term 'encounter' follows Goffman's (1959)(1990ed):26) definition and is therefore taken to indicate 'all the interaction which occurs throughout any one occasion when a given set of individuals are in one another's continual presence'.

In the course of their work, police officers are called upon to deal with diverse situations which involve people who are behaving in ways that suggest, *inter alia*, physical illness, intoxication and mental disorder. The police officers' decisions on the course of action (or inaction) to be taken will be founded on their understanding of the situation (for example, the person has committed a criminal offence; the person is drunk; the person is physically ill; the person is mentally disordered and so on). This initial understanding (which may be modified as the course of their contact progresses) arises from the meaning that officers place upon the outward appearances of the situation as indicative of the inner mental state of the other. The following sections set out, firstly, the mechanics of the process whereby the derivation of meaning is made possible (I(i) 'The Mechanics of Interaction') and secondly, elaborate and explain the 'outward appearances' from which meaning is drawn (I(ii) 'The Setting of the Encounter' and I(iii) 'Regulating the Encounter').

Mead's theory of the mind forms the basis of symbolic interactionist theories of deviance which will be discussed in the course of this chapter. His work is not concerned with deviance in either its generality or specifics but rather with the explication of the mechanics of the social process and its relationship with the mind and the self of the individual.

### **(i) The Mechanics of Interaction**

According to Mead, encounters are 'conversations of gestures within the social process' (1964:159). These gestures are the external manifestations of attitudes that each participant to a social situation holds or directs towards objects (including people) and the responses that such attitudes call forth in each of them. When these gestures, particularly the vocal gesture, arouse the same meaning in one person as they do in another, when they assume a common meaning that is shared not only by the participants but by the wider social group of which they are members, they become what Mead (1964) designates 'significant symbols'. Significant symbols are the communicative signs by and through which individuals hold external conversations with others and internal conversations with themselves (i.e. the process of thought). Moreover,

symbolization constitutes objects not constituted before, objects which would not exist except

for the context of social relationships wherein symbolization occurs (Mead, 1964:165).

Although Mead attaches some importance to the conversation of gestures which 'cannot be translated into articulate speech' (1964:128) the focus of his attention is the significant symbol.

Meaning, according to Mead (1964:163), arises within the matrix of the relation of the symbolic gesture to the adjustive response of the other and to the consequent completion of the social act. The capacity to employ the symbolic gesture and to select appropriate responses and lines of action to those gestures initiated by others is indicative of a reflective intelligence. The mind appears when a person is 'able to point out meanings to others and to himself' (1964:194), and rather than a static entity the mind is to be seen as an ongoing process. Reflexiveness permits individuals to take their social experiences and turn them back upon themselves, so becoming both the subject and object of that experience and '...the whole social process is thus brought into the experience of the individuals involved in it' thereby enabling one individual to take the attitude of the other towards himself and permitting the conscious selecting of a response in the course of a continuous adjustment to the social process (Mead, 1964:196). This statement underpins all further discussion in this chapter.

Mead's work was predominantly directed towards the explication of the linguistic gesture as the significant symbol. Yet according to Stone (referred to in Rose, 1962:91), 'in all cases...discourse is impossible without appearance' and appearance is, for Stone, the non-verbal symbol constituted by attire. Goffman (1967(a)) (among others and most particularly Garfinkel (1967) whose 'backgrounds' of interactions will be discussed below) stressed the inarticulated gestures contained within and elaborated by the significant symbol, the 'small behaviours' (Goffman, 1967(a):1) to which great significance is attached by participants in some situations where verbal communication (if indeed this is a feature of the encounter) may be rendered as of secondary importance in the conveyance of meaning. Thus, Goffman's 'sign activity' and 'sign vehicles' (1959(1990ed):13-14) are not predominantly confined to the verbal communication to which Mead gives primacy. Speech is often significant of abnormality both in the content of what is said (for example, an admission of past or present psychiatric problems) and the way in which it is said (for example, slurred speech may be caused by drunkenness or illness; unexpectedly aggressive language may alert the police officer to a potentially problematic suspect). Equally, speech may be significant by its absence. The inseparability of appearance and discourse however, entails a

'dialectic process' (Stone in Rose, 1962:91) through which the verbal and the non-verbal work in degrees of conjunction and disjunction one with the other so that what is said is confirmed or questioned by what appears. Items of clothing which are incongruous in some way to each other, to the situation or to the wearers; items of clothing which are generally poor and unkempt all amount to a disordered condition of attire that is potentially indicative of a disordered state of mind. This diagnosis may or may not be supported by what the wearers verbally proclaim themselves to be. (On the other hand, a 'normal' appearance may be belied by the unusual and so seemingly incompatible manner or content of that person's conversation).

'Appearance' may be taken by police officers to comprise more than simply the clothes that one wears. When in the presence of others a person is a 'field of expression for them to read' (Rock, 1973:68). These expressions constitute 'gestural style, posture, facial movements...clothing' and so on (Rock,1973:68) and are referred to by Goffman (1959(1990ed)) as 'personal front'. Less fixed than apparel, this general demeanour is constantly adjusted by the officer and the other person in response to a series of symbolic gestures. Moreover, the terminology 'expressions given off' (Goffman,1959(1990ed): 16), is not only inclusive of 'glances, gestures and positionings' (Goffman,1967(a):1) but also the setting in which the interaction takes place (see I(ii) 'The Setting of the Encounter' below). The minutiae of encounters as diminutive social worlds cannot, therefore, be communicated adequately through the significant symbol of language alone (and language may conceal more than it reveals) and so there is left an absence of social facts. As Goffman (1959(1990ed):241) points out, the overt, observable, recordable information about parties to the encounter (for example, their psychiatric history, their criminal career) and their covert 'innermost feelings' are not or will not necessarily be available during the course of the meeting and may only be inferred from 'predictive devices' of 'cues, tests, hints, status symbols' and so on.

Thus, in the immediate absence of any authoritative verbal or documentary accounts of another's past or present state of mental health (whether these accounts emanate from psychiatric sources, from fellow police officers or from officers' own knowledge of the other person), a lay diagnosis of mental disorder made by a police officer upon an individual must arise from a multiplicity of verbal and 'bodily' signs which may evidence abnormality.

Goffman (1959(1990ed)) perceives the mechanics of face-to-face interaction as a managed operation, as the performance of parts on a public stage surrounded by the necessary props and attired in the appropriate costume. Since all participants are then

potentially engaged in playing a part, in impression management, (and presumably attribute the playing of such parts to others) they are only too aware that individuals portray what they wish to portray. A search for 'reality', for 'what is really going on,' is therefore concentrated upon appearances and on the aspects of the setting and behaviour that is 'ungovernable' (Goffman,1959(1990ed)); that is, beyond the ('innocent' or 'deceitful') manipulative control of the individual (see II(ii) 'The Self in Interaction' below). However, the 'contextual relativities' of the encounter itself inhibit the emergence of true expressions. Goffman(1967(a):143) states that all forms of communicative signs are mediated by 'approved patterns of manner and association or co-participation in terms of which individuals are obliged to regulate their comings together', in other words, meaning itself is filtered through this 'working consensus' (Goffman, 1959(1990ed):21).

#### **(ii) The Setting of the Encounter**

Against a physical backdrop of non-verbal 'glances, gestures and positionings' (Goffman,1967(a):1), the words spoken during the face-to-face conversation communicate a wealth of information to the parties. The meaning that is signified in Mead's (1964) linguistic gesture is a symbolic representation of a person's 'attitude' towards an object. 'Attitude', and therefore meaning, arises out of particular cultural and social settings. Further, meaning arises out of everyday situational settings of time, place and participants. Yet further, it arises out of the 'working consensus' (Goffman,1959(1990ed):21) reached by and framing that particular encounter of those particular participants at that particular time and in that particular place.

Police officers meet individuals in a diversity of situations in public places and private places: on the streets, in houses, in police stations and in hospitals. Interpretations must be put upon the behaviour that initiated the police involvement with that person (whether or not that behaviour amounts to a criminal offence). Equally, explanations must be sought for any continuing or new behaviours which may become increasingly apparent as the association between the parties progresses in duration and complexity and as its location changes from, for example, a public place to a more private place upon the transference of the 'action' to the police station.

In sum, the police and the other person, in the course of an ongoing encounter, may move in and out of a series of settings, all of which give rise to meaning and which contribute to a 'making sense' of what is really happening. The interactionist literature focuses on this series of settings.

The notion of 'background' may also be usefully employed to indicate the more readily observable features of a social setting from which meaning may be derived. The social settings of class, for example, as Rock (1973) points out, are associated with a scale of moral standing which progressively increases from the immoral lower classes through to the highest of moral classes. Behaviour which may be condoned as a 'prank' when engaged in by members of the upper strata of society may well be condemned as deviant when engaged in by the lower (Rock, 1973:47-48).

Settings are also constituted by fixed physical or geographical features (for example, a home, an office, a workplace and their furnishings, in which latter category may be included the police station) which Goffman (1959(1990ed):32) designates as part of the 'front'; as 'expressive equipment of a standard kind intentionally and unwittingly employed by the individual during his performance'. They are also constituted by ascertainable time (night, day and so on). Meaning derives from the conjunction of the settings, those people who are entitled to occupy them, permanently (for example, residential neighbourhoods) or temporarily (for example, workplaces) and from their behaviour within them. So, for example, black men are entitled to occupy black neighbourhoods; consequently they are 'out of place' in white neighbourhoods (Rock, 1973:80). 'Out of place' becomes more pronounced (and more abnormal) if this presence is detected during the hours of darkness. 'Out of place', then, relates not only to the contexts of physical or geographical space and locations but also has a temporal quality. 'Out of place' may be 'out of time'. 'Out of place' in the context of the structural positioning of an individual in relation to a social group impacts upon the attribution of abnormality since a 'member of one's own family, a neighbour or a friend are the least permissible targets of predatory attack' whereas 'strangers or members of despised groups [or] bureaucracies' (in other words, increasingly anonymous individuals/bodies) can legitimately attract condemnation (Rock, 1973:88). Structural place in relation to those 'significant others' (family, friends and so on) may mean that behaviour which a psychiatrist would define as mentally ill would not be defined as abnormal by the family of that person (Taylor, 1971:45-6).

There are settings in which abnormality is the norm, described by Rock (1973:81) as 'special deviant contexts' citing the examples of, inter alia, carnivals, Guy Fawkes night and so on where somewhat unrestrained and unusual behaviour is condoned and even expected. This normalisation of the abnormal may be said to extend to police stations where, although not condoned, verbal and physical violence, for example, is an everyday occurrence.

The embodiment of the 'special deviant context' is the total institution constructed

purposely to protect the welfare of and the community from, most particularly, the mentally and physically disabled and the criminal. Goffman (1961) explains the features which distinguish the setting and necessarily those who occupy it as abnormal.

Their encompassing or total character is symbolized by the barrier to social intercourse with the outside and to departure that is often built right into the physical plant such as locked doors, high walls, barbed wire, cliffs, water, forests, or moors (Goffman, 1961:15-16).

### **(iii) Regulating the Encounter**

Mead (1964) indicated the temporal nature of face-to-face interaction in his concept of the 'anticipatory' gesture, that is, when a gesture taking place in the present signifies the future intention of the person who makes it. That this future may never be realised is in a sense irrelevant since the responsive line of action on the part of the other has already been initiated by the anticipatory gesture itself. Moreover, reference must continually be made to the history of the conversation in order to understand its future. Participants must wait 'for something more to be said in order to hear what has previously been talked about' (Garfinkel, 1967:40). Consequently,

many expressions have the property of being progressively realised and realisable through the further course of the conversation (Garfinkel, 1967:41).

Mead's significant symbols and Goffman's 'sign vehicles' carry meaning that cannot be realised by an observer who knows little or nothing of the situation and those persons engaged in it. Each utterance

constitutes a word and refers to a certain person, time, or place, but names something not named by some replica of the word. Their denotation is relative to the speaker. Their use depends upon the relation of the user to the object with which the word is concerned

and upon the 'temporal' and 'spatial' setting (Garfinkel, 1967:4-5). This structure of interaction is then a process, an operation of those individuals in that context:

in exactly the ways that the a setting is organised, it *consists* of members' methods for making evident that setting's ways as clear, coherent, planful, consistent, chosen, knowable, uniform, reproducible connection - i.e. rational connections' (Garfinkel, 1967:34).

Parties draw up this consensus by interpreting not only what is said but how it is spoken, whether this be, for example, naively, ironically, euphemistically and so on (Garfinkel,

1967:29-30). They will also draw upon observable and recorded biographies and knowledges and previous encounters.

The sum of these will be understood by the parties to have accorded with their relationship of interaction as an invokable rule of their agreement...whose use provided that they *would* understand each other in ways that they *would* be understood

- in other words, a shared agreement where what can be and is said is 'said according-to-a-rule' (Garfinkel, 1967:30-31). Importantly between parties there are matters that are taken for granted, that amount to shared understandings (Garfinkel, 1967:39). There is an 'anticipation that persons *will* understand, the occasionality of expressions, the specific vagueness of references' and so on and thereby entitle themselves and others

to claim that they know what they are talking about, and that what they are saying is understandable and ought to be understood...Departures from such usages call forth immediate attempts to restore a right state of affairs (Garfinkel, 1967:41-2).

The unwitting subjects of Garfinkel's researchers whose behaviour passed beyond the boundaries of these conditions of entitlement during encounters (by requesting yet further clarification of each usually commonplace remark) dealt with their anger and bewilderment by accusing the researcher of 'sickness' or 'craziness' or by refusing to continue with the conversation. (These devices may be referred to as 'protective practices' (Goffman, 1967(a)) which are employed when parties to the encounter feel threatened by the behaviour of the others).

So it is when the police are called upon to deal with abnormally behaved people. Shared agreements built up between police officers and others will structurally utilise any previous first or second hand knowledges of those others which are in the possession of either party; or any history of previous deviant behaviour known to the officer and concerned with criminal or mental health matters. 'Personal norms and expectations' are created as the 'behaviour of one party is adapted to' and the 'atypical is normalised' (Yarrow et al in Scheff, 1967:36), particularly where the behaviour is sufficiently ambiguous as to be classified as ordinary or usual and where the person has no previous history of deviancy (Rock, 1973:74). Should the 'atypical' come to present an increasingly serious problem tolerance decreases as the behaviour becomes increasingly difficult to explain away. Police officers, then, may reach a point where unusual behaviour can no longer be rationalised as being, for example, typical of intoxication by drink or drugs, or of any normal aggression

towards the police and they are driven to conclude that the problem is a psychiatric one (Yarrow et al in Scheff,1967).

The process of establishing shared agreements between police officers and abnormally behaved people is an oft repeated one for once individuals are taken into the custody of the police they embark on a progression from the attending officer through the custody officer and on to the interviewing officer. Further, present at these meetings may be the police surgeon or a lawyer and so on (see Chapter 3).

Although parties may have to negotiate an individual context for that particular (and perhaps for future) interaction, these negotiations take place in a setting of 'sanctioned properties of common discourse' (Garfinkel, 1967:41) (these properties having been outlined above). However, beyond this setting lies Goffman's (1959(1990ed)) 'working consensus' and Garfinkel's (1967) 'common understandings' which are those matters (rules, customs and usages of a legal, formal and non-legal, informal nature, appearances, status symbols and so on) that people take for granted when entering into social situations. According to Garfinkel (1967:36), they are "seen but unnoticed", expected, background features of everyday scenes' that people employ as schemes of interpreting sense data, symbols and so on in order to derive meaning from an encounter. It is often only when these background expectancies are disrupted that people realise what they are. The importance of background expectancies is indicated in the response of individuals to Garfinkel's (1967) intentional and organised disruptions (for example, when students adopted the role of a polite and circumspect lodger in their own home in order to confound familial expectations of their 'normal' behaviour), the 'disrupter' notably being defined in a number of cases as 'crazy' or 'sick' (Garfinkel,1967:42-44).

One of the seen but unnoticed features of everyday encounters is subverted in those which occur between the police and another individual. Garfinkel (1967, utilising the work of Schutz, 1932;1962;1964;1966) suggests that since people expect objects to be, both for themselves and others, what they appear to be, there exists a sanctioned 'relationship of undoubted correspondence' (Garfinkel, 1967:50). To transpose expectations into doubts, trust for distrust, by assuming that people are other than they appear to be and that they are acting upon an agenda of hidden motives generally presents problems for both the doubter and the doubted. Other than where those doubted are close family or friends, the former experience feelings of acute embarrassment and shame. The latter express 'frank displays of anger and disgust' which leave in their wake a 'residue of disturbance' (Garfinkel,1967:52). A relationship of 'undoubted correspondence' is subverted in police encounters with people



who have broken social, and more importantly, legal rules. Notwithstanding that officers may feel an entitlement to trust from those others, they themselves practice 'systematic distrust' (Rock,1973:76). Deviation from the rules undermines trust that all members of social collectivities will play by the rules that govern them (Cohen,1966:4-5). Since the nature of their profession constitutes 'everyday encounters' as 'everyday encounters with deviants', doubting motives, doubting and re-interpreting what a person says and does (Rock,1973:77) becomes the norm (see later in relation to the participants to the encounter - and further in the conclusion to this chapter). An encounter between the police and another, then, has the property of being both unique and commonplace. The shared agreement is set against background expectancies that are common to all of police encounters with rulebreakers both inside and outside the confines of the police station. It is in this sense that the unique is rendered mundane.

The 'encounter', as explained in its 'operational mechanics,' is the theoretical location within which all observable behaviours, all data that is perceived by the senses may be drawn out and catalogued in order that an analysis of 'confounded expectations' may be undertaken. Symbols and signs whose presence subverts and confounds the varied but routinised associations which take place between the police and another are the indicators of abnormality and, if they cannot be rationalised as 'typically criminal,' the only recourse may be to call the person 'mad'. The theoretical analysis of 'The Participants to the Encounter' and 'The Rules of the Encounter' that follows will substantially expand upon these concepts.

The foregoing discussion has laid the groundwork for the construction of a police 'Identikit' of mental disorder. The archetypal lunatic or simpleton is often portrayed in society as engaging in forms of out of the ordinary gesturing (for example, exaggerated bodily movements) or by presenting a face whose wild or drooling expressions brand that person as mad. The uncontrolled and sick mind is further portrayed as revealing itself in uncontrolled speech. The 'contextual relativities' of the situation also serve to normalise that which would otherwise be abnormal (and the converse equally holds good). The extent to which one may be 'out of place' or 'out of time' may be so overwhelming as to indicate madness in spite of an otherwise normal appearance.

The explanations of the encounter have established that part of the analytical framework within which police descriptions of their dealings with the extra-ordinarily behaved will be examined and understood. The rules so far discussed are relevant to the analysis as follows -

(i) to identify the signs given off by appearance and language upon which the police place value as indicators of abnormal mental processes.

Since symbols are not given off in a vacuum but in particular settings then the rules are relevant

(ii) to identify the kinds of settings from which the symbols will draw meaning.

(iii) to identify the kinds of background settings and working agreements from which symbols will draw meaning.

(iv) to identify the ways in which police dealings with rulebreakers generates typifications of abnormality and normality.

## **II. THE PARTICIPANTS TO THE ENCOUNTER**

The face-to-face encounter during which ascriptions of abnormality (or normality) are made is peopled by, at the very least, the police officer and the person who is, for example, under arrest or being interviewed. These main protagonists are more often than not subjected to the gaze of others, inter alia, the public, police colleagues and members of other agencies. Rock's (1973:22) statement that deviancy 'is everywhere and always the outcome of an interaction between rule-makers, rule-enforcers and rule-breakers' is a concise expression of what is more fully explicated in the following discussion of the participants to the encounter and the emergence of deviance.

### **(i) The Constitution of Self**

Individuals bring themselves to encounters, selves which are complex both in their creation and their continued maintenance. A pre-requisite of the creation of a self is, according to Mead (1964:203), reflexivity, the facility to become an object to oneself by

taking the attitudes of other individuals toward himself within a social environment or context of experience and behaviour in which both he and they are involved.

Through the conversation of gestures

one is addressing other persons and at the same time addressing one's self and...one controls the address to other persons by the response made to one's own gesture (Mead, 1964:204).

Mead's (1964) explanation of the acquisition or genesis of the self, states that people,

throughout the course of their lives, assimilate the different roles of those whom they encounter and the responses that these roles evoke in others. Illustrative of this claim is the example given of a child acting out, in the course of play, the parts of those who affect its life - parents, teachers and so on, and thereby ordering these people into an organised relationship with each other and with the child itself (Mead,1964:214-216). The roles that are acquired are necessarily incomplete since time and energy prevent a person from learning a part in all its specific detail. What individuals do possess is a framework, the bare bones of Mead's roles, and a sufficient repertoire (for example, abstract attitudes which form qualities of character such as honesty, integrity, loyalty; a variety of emotions and so on) to enable the gaps in that part to be filled (Goffman, 1959(1990ed)).

Progression beyond this rudimentary development of self requires that individuals not only take the attitudes of other individuals towards themselves and toward one another (Mead, 1964:219) but also take their attitudes towards all the aspects of their common social undertakings. These attitudes or responses which a social group hold in common are termed by Mead (1964) as the 'generalised other'. It is this 'generalised other' which informs the response of individuals not only to the attitudes of other people but also to themselves, thereby becoming the foundation of the self. Therefore, it is not necessary that in order to respond to others a person must experience all instances of social behaviour within their group. The process of socialisation into a community and the concomitant emergence of a self capable of abstract thought ensures that the individual possesses the common response of that community. (The notion of community or group can be stated a little more specifically in that the 'basic organisation of the self is reflected from surrounding persons to whose approbation and criticism one pays attention' (Gerth & Mills,1978:116), persons for whom a preferred term of reference may be 'significant others' (Taylor,1971)).

Mead (1964) repudiates the conception of a self that is physiologically inherent and static, and instead proposes one that is acquired and maintained through the process of socialisation. The 'generalised other' continuously acquires the common attitudes and responses of the more and differing social groups with which the individual engages in social relations (for example, political parties; membership of professions). Thus the totality of the self comprises a multiplicity of 'others'. Individuals have the capacity to divide this multiple personality or sum of all the aspects of the self into different selves as and when the social situation requires (Mead,1964:204-209). The making of the 'appropriate' response is the expression of the 'appropriate' self.

The facets of the self which enable a response to be selected and which elevate the self

from a 'bare organisation of social attitudes' (Mead,1964:228) are what Mead terms the I and the Me (1964:228). The part of the self which emerges from the taking and organising of the attitudes of others (i.e. the generalised other) is represented by the 'Me' and it is the Me that the person is conscious of. During interaction (i.e. the 'reciprocal influence of individuals upon one another's actions when in one another's immediate physical presence' (Goffman,1959(1990ed):26)) the response itself is represented by the I and is held by Mead (1964:231) to be possessed of a limited degree of novelty and uncertainty. No response exactly mirrors its anticipation. The limitations are fixed by the Me which 'determines the sort of expression that can take place, sets the stage and gives the cue' (Mead,1964:238) to which the I responds. The I, then, while enabling some freedom of action and initiative, exists not in the future or the present but in the past, that is, when a person becomes aware of the I it is always consequent upon the action which the I has initiated. Thus, for Mead (1964:229), the I is an 'historical figure' which, now incorporated as a part of the Me, is experienced only as a memory; the 'I in memory is there as the spokesman of the self of the second or minute or day ago'. That each person has their own 'peculiar individuality' is attributable to the fact that

each individual self...reflects and is constituted by their own particular and unique place or standpoint in the process of social behaviour (Mead,1964:234).

These workings of the I and Me are controlled in the sense that the organised attitudes comprising the Me afford the I a restricted freedom of response. According to Mead (1964), it is in any situation where control is lost, that is, where impulse destroys the usual equilibrium of the I/Me relationship, that extra-ordinary responses occur (as Mead cites as an example, there are situations which produce great emotional stress and the response may then be one of violence, the I reacting in a manner not subject to the control of the Me/generalised other). The 'contextual relativities' of persons and settings place limitations upon the expression of the self since in the course of

contact of a particular type, an interactant of known or visible attributes can expect to be sustained in a particular face...Given his attributes and the conventionalized nature of the encounter, he will find a small number of lines open to him (Goffman,1967(a):7).

Goffman's dramaturgical analysis also proposes a self of two parts, the 'character' (Goffman, 1959 (1990ed)) or 'face' (Goffman, 1967(a)) and the 'performer'(Goffman, 1959 (1990ed)) and equally challenges the commonsense notion of the self as an 'organic thing' that is

'housed within the body of the possessor' (1959 (1990ed):244). The body is no more than a peg on which a self is hung, a self which derives from

the whole scene of his action, being generated by that attribute of local events which renders them interpretable to witnesses (1967,244).

The part of self that Goffman (1967:245) terms character is the

*product* of a scene that comes off, and is not a *cause* of it...a dramatic effect arising diffusely from a scene that is presented, and the characteristic issue, the crucial concern, is whether it will be credited or discredited.

Therefore, this character or social face is only on loan to a person from society and can be withdrawn on proof of unworthiness (Goffman,1967(a):10).

The 'performer', on the other hand, learns the parts, guides the performances and has the capacity to experience hopes and fears, even shame, about the performances which lead to an attempt to minimise the risks of exposure (Goffman, 1959(1990ed):245). The performer equates rather more to the I of Mead than does the character who moves on and off stage as required by the action. The performer, however, must be constantly alert and active in the furtherance of the presentation of this social self, organising the 'generalised other' and initiating the appropriate responses. The notion of a performer is vital in the imputation to people of the capacity to play parts (see Chapters 2 and 4, for example, in relation to police mistrust that 'mentally disordered' behaviour is 'really' indicative of mental disorder).

Police officers are possessed of the rudimentary framework (provided by the 'generalised other') upon which they may build their selves, to play the parts of police officers. (Equally, police officers are possessed of the rudimentary framework upon which a mad self may be built. As inside the police officer is the lunatic, so inside the lunatic is the police officer). Gaps in the framework are filled during the course of interaction with others as officers learn the ways in which they can and must deal with others (the making of appropriate responses) which maximise the effectiveness of the presentation of their selves and minimise potential threats from those others. Fundamental aspects of this process are now explained in 'The Self in Interaction'.

## **(ii) The Self in Interaction**

In order to understand the social situations in which they find themselves, people 'must first

identify, define and classify' and

indicate to themselves what sort of object it is that they are dealing with....these objects include people (Cohen,1966:97).

Since a failure to categorise would result in some degree of undermining of one's own self, this process of interpretation and classification is fundamental to the simultaneous process of the selection of the appropriate response and the presentation of the appropriate self.

Police officers are situated in multiple social worlds, each world possessed of particular attitudes or 'perspectives' (Shibutani in Rose,1962). Successfully to take the role of a police officer, to 'be' a police officer in any face-to-face encounter, means that the perspective common to the profession is taken, that the 'professional' common response is made. The professional perspective (i.e. 'an organised view' of the

attributes of objects, of events and of human nature.....assumptions of what is plausible and what is possible (Shibutani in Rose,1962:130))

will lead to a definition of a situation that may vary considerably from its definition should the officer be operating in another social world (for example, as a parent; as a friend).

Residence in multiple social worlds invariably leads to a conflict of perspective (Shibutani in Rose,1962). Where the behaviour of people is inconsistent with police expectations about 'normal' behaviour in the social situations in which they meet them, the tendency may be to rationalise these inconsistencies (Shibutani in Rose,1962:140) with the expected role or self of the person as possible aspects of that role. In other words, the police construction of the normal offender or the mentally disordered offender or the alcoholic offender and so on may be modified to take account of this instance of 'new' behaviour. Should a resolution between incongruent expectations from diverse social worlds prove impossible, people are faced with a choice of perspectives, the tendency being that the decision turns in favour of the group whose norms prove to be the most attractive or important (Shibutani in Rose,1962:140), the group, in this case, being the police. Taking into account the limitations upon the expression of the self discussed below, it appears that institutionalised rather than idiosyncratic responses to forms of unexpected behaviour become inevitable.

An encounter involves each participant in a search for knowledge about those other selves who are a part of it. The information gained and the interpretation placed upon it will

then enable them to be placed into a 'socially recognised category' (Cohen,1966:97) or 'role' which is assigned by society or 'significant others' a framework of criteria (for example, characteristics such as gender, race, class and qualities such as loyalty and intelligence) and which thereby give rise to expectations of their behaviour. As Turner (in Rose,1962:23) points out,

a role cannot exist without one or more relevant other-roles toward which it is oriented.

The role of police officer cannot exist without the role of lawbreaker. The role imputed to the other participant to the meeting

becomes the point of reference for placing interpretations on specific actions, for anticipating that one line of action will follow another and for making evaluation of individual actions (Turner in Rose,1962:24).

Therefore, when meeting an individual whose behaviour has necessitated the attention of the police, an officer must categorise that individual as, for example, drunk, ill, drugged, mentally disordered and so on in order to respond to them in the most appropriate way, one which is permitted by the rules and conventions which structure encounters between police and rulebreakers and which permits the maintenance of the self. Expectations of behaviour, the attribution of a role to others, are established and are incorporated into the shared agreements of encounters.

Virtually everything that people do, whether witnessed by others or not, can be interpreted as evidence regarding the self (Cohen,1966:98). By reading the 'field of expression' (Rock,1973:68), through interpretation of their personal front (Goffman,1959(1990ed)), the selves of others become apparent. These selves are expressed to others, however fleetingly and superficially, through these symbolic gestures even in the 'loosest of settings' (Rock,1973:68) (for example, momentary encounters with strangers; co-presence in a crowd). Since the essential knowledge that is required from these briefest of interactions is whether, to the observer, others represent a potential threat of some kind (Rock,1973:68) (for example, a stranger loitering in the neighbourhood; disorderly public behaviour) or potential safety, relatively few and highly visible symbols must swiftly be selected and treated as highly significant (for example, attire; demeanour). Appearance, and particularly clothing, identifies people and situates them in social terms. As Stone (in Rose,1962:93-94) points out, a coincidence of the place accorded to persons by those who

observe them with the place announced by the wearers establishes identity which then becomes a meaning of the self. Thus police officers announce their identity by the wearing of the appropriate uniform and the response of the audience to them as police officers validates that identity (Stone in Rose, 1962:94). It follows, therefore, that appearance, as discussed in I(i) 'The Mechanics of the Encounter' above, can also convey a social place that the person does not possess although this may be unintentional in that the person is unaware of or incapable of anticipating the meaning that will be attributed to personal appearance by others. To adapt Goffman's (1959(1990ed)) dramaturgical terminology, the person plays a part that does not come off. Equally, appearance may be employed to present the self that one would wish to be in the eyes of others. 'In appearances selves are established and mobilized' and

(a)s the self is dressed, it is simultaneously addressed for, whenever we clothe ourselves, we dress 'toward' or address some audience whose validating responses are essential to the establishment of our self (Stone in Rose, 1962:101-102).

Thus, where a uniform of disordered appearance is taken to mean a disordered self, a misattribution of identity may be made that is difficult to reverse.

The more immediate and prolonged the encounter, the more the information that becomes available. No longer do participants have to rely on symbolic behaviour and personal front alone but can also seek out knowledge of other people and who and what they are from their verbal explanations about the motivations for their present behaviour and from third party reports on them, for example, a medical assessment.

The information that is presented is not necessarily taken on trust and, as indicated above, police practice is to invoke a rule of distrust in their meetings with the deviant public. In addition to remaining alert to the 'ungovernable', an attempt to go beyond the outward appearances and gain an understanding of the inner self, that which is 'unapparent' and 'covert' may, where the information available is ambiguous, be realised by attributing to it a motive. What Goffman (1970:19) refers to as an 'uncovering technique' by which one self attempts to step into the shoes or self of another, Mechanic (in Scheff, 1967:26) explains as an 'empathy process' which in 'the language of Mead, he assumes the role of the other and attempts to empathize'. The more difficult the empathy process the more likely the behaviour to be seen as deviant and consequently as mentally disordered.

Goffman (1959(1990ed):22) believes (and this belief is espoused in common sense) that first impressions, that is, 'the information that the individual *initially* possesses or



acquires', are crucial. (Conversely, therefore, it is imperative that one starts as one means to go on in establishing a definition of the situation (Goffman,1959 (1990ed):23)). It is on this basis that a person 'starts to define the situation and starts to build up lines of responsive action' (Goffman,1959(1990ed):22) and to establish the foundations of the shared agreement. Although this initial impression may be modified as the interaction progresses the tendency is that it is largely sustained (Goffman,1959 (1990ed):22). Some roles (particularly when taken in conjunction with the 'contextual relativities' discussed above) are 'fairly rigidly prescribed' (Taylor,1971:44 who gives the examples, inter alia, of bank manager and army officer). The personal fronts which permit their identification also give rise to abstract and stereotyped expectations based on past experience (Goffman,(1959) (1990ed):32), this past experience including that possessed by the individual in the form of the 'generalised other'. Qualities and attributes of self may, therefore, be readily and often simplistically imputed. Some deviant roles, particularly that of the 'lunatic', are well-known figures within societies, even serving an 'educative purpose' as 'folk-devils' (Rock,1973:34). These are characters, existing predominantly in the imagination rather than in the course of everyday life, about whose qualities there is consensus (Turner in Rose,1962:30), that people tend to know in some depth and so may impute to and expect from a person so categorised a whole range of behaviours. Roles (and concomitantly, common responses) are not static and immutable. Odd and unexpected behaviour can frequently be subsumed within the boundaries of given roles (particularly through the processes of rationalisation and normalisation), thus modifying them in the process. Nevertheless, once a social role (deviant or otherwise) has been attributed, signs that confirm this status may be sought out as signs that appear to cast doubt upon it may be denied or reinterpreted.

In acquiring a self, individuals acquire a self-image, of the self or the kind of person that they wish to be (and may come to believe themselves to be). This process renders the person both and simultaneously as performer and audience. By its very nature it teaches individuals how to dissimilate and to present, with whatever degree of calculation and with whatever motive (good or bad) that appears to them to be required, the self that they would wish others to believe them to be (which gives urgency to the search for the hidden and presumably 'real', 'true' selves of others). Goffman (1959(1990ed):77) frequently refers to the unintentional or unwitting performance of a part and to the fact that behaviour is neither truly honest nor solely calculated to deceive and mislead the audience. Nevertheless, to achieve the desired effect and successfully define one's self some artifice (and such artifice is often acceptable) is often required.

It is always possible to manipulate the impression the observer uses as a substitute for reality because a sign for the presence of a thing, not being that thing, can be employed in the absence of it (Goffman,1959(1990ed): 243).

### **(iii) Management of the Self**

'(T)he rule governed activities of everyday life' (Garfinkel,1967:35) that constitute the background expectancies and shared agreements of everyday social encounters extend to the rules, norms and practices or, in other words, the 'rituals' which structure face-to-face conversations. Disruptive events

however small in themselves can weaken the whole design of the encounter, leaving the participants bewildered about what next to do, or what next to try to be (Goffman,1961:44).

It is through symbolic rituals, such as rules of self-respect, considerateness and tact among other 'face-saving practices' enumerated by Goffman (1967(a)), that people defend and protect their selves and those of others. The potential for the disruption and breakdown of the interaction with its attendant and fateful consequences for those involved is thereby minimised. It is through ritual that the 'functional relationship between the structure of the self and the structure of social interaction' is made apparent (Goffman,1967(a):36).

The image of self is of paramount importance to the individual: social face, while one's most personal possession (Goffman,1967(a):10), is in part a reflection of the reaction of others to oneself (Rose in Spitzer & Denzin,1968:54). Acceptance of positive and negative audience reactions generates a positive and negative self-image. Social interaction poses danger in that each occasion requires this self (or more correctly, the appropriate aspect of this character or face) to be convincingly presented to others. Should the performance fail, inappropriate responses be made and incorrect lines of action taken, it is the self that is discredited and the individual is attributed a self that is undesired.

The successful establishment and maintenance of self is dependent upon ensuring the correct response of others to one's expressive behaviour and this control is achieved largely

by influencing the definition of the situation which the others come to formulate, and he can influence this definition by expressing himself [sic] in such a way as to give them the kind of impression that will lead them to act voluntarily in accordance with his [sic] own plan (Goffman,1959 (1990ed):15).

However, symbols such as those which constitute personal front and which are utilised to

present the desired image of self are, in a sense, a two edged sword since they are equally signs that might betray information that, if revealed, would be fatal to that image. Individuals must always be on guard against the unmeant gesture (Goffman,1959(1990ed)) as great store is set by the validity of uncontrolled behaviour in revealing another's essential self. Similar priority is also accorded to emotions, exhibitions of, for example, distress, fear and anger taken as being 'ungovernable' (Goffman,1970).

However, in searching for foolproof evidence the observer should beware, '*for the best evidence for him is also the best evidence for the subject to tamper with*' (Goffman,1970:63). Therefore, despite the credibility afforded to the 'uncontrolled', individuals are well aware that such signs may be employed as a tool to manipulate the definition of a situation. Should their employment fail to convince other participants (for example, there may be discord between the emotion displayed and what others know of persons' past history and behaviour), meaning must be sought elsewhere in the encounter and in the shadings of conduct that are truly uncontrolled (Goffman,1959(1990ed):20) (for example, the 'backstage' activity of people who believe that they are not observed).

Maintenance of face requires the suppression of selves that would be inappropriate to the encounter and the suppression of feelings that do not fit the desired and projected image. There may exist 'destructive information' which must remain concealed (Goffman,1959(1990ed):141). For example, persons' self-images may be those of 'criminal' or 'mentally disordered' since self-definitions of abnormality or deviancy are made possible where individuals are aware that aspects of themselves and instances of their behaviour (undiscovered by and unknown to others) would bring forth a condemnatory common response (Rock, 1973:24). On the other hand, it may be that one party possesses 'destructive information' about the other (for example, by virtue of their authoritative professional position) and sets about putting this information to good use. Concealment may occur in relation to a professional self where only the attitudes and the qualities that a person believes to be associated with that profession are incorporated into an 'ideal' performance (of 'police officer') (Goffman,1959(1990ed):44). Care must be taken over this performance as the individual self that emerges is often taken by others to be representative of the social group or establishment of which the actor is a member. The process of protecting the self, therefore, involves rituals which are designed to save one's own face and which, moreover, are designed to protect the face of the other when danger threatens to undermine any of those selves. According to Goffman (1967:15), 'basic kinds of face-work' include the maintenance of respect and politeness and a pretence that all is 'normal' where a threatening

event has occurred, for example, where one of the parties suffers from a mannerism of behaviour that is out of the ordinary. Should normality refuse to prevail, corrective practices are employed by one party (for example, offering the 'offender' the opportunity to explain the unusual conduct - as a joke, as a mistake and so on) to neutralise the threat (Goffman, 1967(a)).

Rule following involves individuals in moral obligations to undertake to behave in a particular way and moral expectations that others will behave in a particular way and a breach of the rules threatens both parties (Goffman, 1967(a)). Therefore,

a person engaged in conversation is expected to face toward his partner....to look towards the other's eyes.....to stand at a proper conversational distance, neither one inch away nor across the room (Scheff, 1966:32).

During face-to-face encounters, people are obligated or at least expected not to violate the 'ideal sphere' of the other (Simmel (1950) cited by Goffman, 1967(a):63). This 'sphere' is the spatial area which surrounds the person and which (given the degree of familiarity of the relationship between the parties) must not be trespassed upon by words, for example, the inappropriate use of a Christian name or topic of conversation, or by actions, for example, certain bodies or parts of the body must not be touched (Goffman, 1967(a):67-8). Violations of the 'ideal sphere' are indicative of abnormality, for example, mental patients are renowned for their inappropriate verbal and physical indiscretions towards other 'normal' people (Goffman, 1967(a)). Violations of the 'ideal sphere' are similarly consequent upon a diagnosis of mental disorder which may lead, for example, to persons undergoing invasive physical examinations or psychiatric treatment.

Goffman (1967(a):77) couples the notion of deference with that of demeanour, constituted by

deportment, dress and bearing which serve to express to those in (his) immediate presence that (he) is a person of certain....qualities

(and this concept has been thematic throughout this chapter). Goffman (1967(a)) also points out that the rules for both deference and demeanour may be asymmetrical in that one party is permitted to do what the other is not. This asymmetry is encapsulated by the relationships that police officers have with rulebreakers. Should demeanour create a self-image, albeit one that cannot be seen through their own eyes (Goffman, 1967(a):78), that symbolically expresses mental disorder, then the disordered may have a proper personal appearance thrust

upon them at the expense of their dignity (Goffman,1967(a): 80), for example, compulsory forms of dress, hygiene and so on.

The asymmetrical relationship between the police and the rulebreaker subverts the rituals of the face-to-face encounter (as cited by Scheff,1966 and Goffman,1967(a)). Absence of reciprocity between obligation and expectation indicates that one party (i.e. the police officer) invokes rules of 'disrespect' and 'distrust' and these rules hold that the 'ideal sphere' of the other is justifiably to be violated in order to uncover motives, to uncover the 'truth', and that (within the limits of the substantive law) such violation may extend to the verbal and the physical. Goffman (1970:41) provides the example of a police/suspect interview whereby the suspect may be made nervous by accusations; is called names; is forbidden to smoke; is subjected to silence, all of which may provoke a response that is out of the ordinary, which increases suspect vulnerability which in turn may give a stronger appearance of some wrongdoing.

Finally, that a person does not always act alone in interaction is dealt with by Goffman (1959(1990ed)) in the concept of team. When a person is publicly engaged in exhibiting the characteristics of the tasks of their profession (i.e. the idealised performance), the

definition of the situation projected by a particular participant is an integral part of a projection that is fostered and sustained by the intimate co-operation of more than one participant (Goffman,1959(1990ed):83).

This would appear to be the case whether those other participants are physically present or not. This 'team' of participants

is a grouping, but...not in relation to a social structure or social organisation but rather in relation to an interaction or series of interactions

during which the projected definition of the situation is maintained (Goffman,1959(1990ed):108).

The characters are performed on the front stage, backstage being the area where performances and settings are organised, props are stored, team-mates are tutored and where the team can relax: it is a place, therefore, to which the audience must always be denied entry (Goffman,1959(1990ed)). Symbolic gestures (attire, demeanour and so on.) that are appropriate before and between colleagues backstage differ from those presented to an audience. Since

performers tend to give the impression that the role they are playing at the time is their most important role and that the attributes claimed by or imputed to them are their most essential and characteristic attributes (Goffman, 1959(1990ed):136),

it is imperative that only the audience for whom this performance is intended is present and that, at all costs, 'outsiders' must be kept out. That characters may be most successfully brought off requires that

members of the team exercise foresight and design in determining in advance how best to stage a show (Goffman, 1959(1990ed):212),

in an effort to counter the unanticipated which would potentially disrupt the interaction, discredit the team and the (professional) self that has been projected.

Police officers realise their professional selves through a process of socialisation into the (professional and bureaucratic) organisation that is the police service. This self is reaffirmed during each 'successful' encounter with another individual in the course of operational duties. Throughout the training process and these professional duties, the officer acquires not only the ability to take the role of a police officer but also acquires the rudiments of the roles of a variety of rulebreakers with whom the police come into daily contact. The routinised associations between police and rulebreaker give rise to expectations of the type of people that are likely to be encountered and the manner in which they can and may be most suitably be dealt with. There exists, therefore, an amorphous body of people whose deviant behaviours are diverse but who may nevertheless be classified as 'the normal deviant'. On occasion, however, everyday expectations of the officer may be challenged by behaviour which threatens to defy definition, to defy easy incorporation into a known role. Since police selves are jeopardised by an inability to deal with a situation that falls within the ambit of professional duties, action must be taken to protect and thereby maintain that self. The reciprocity of selves during an encounter permits that action can be taken in respect of the other self, particularly, for example to re-define the behaviour of that other (and therefore define oneself); to allocate that other a role with which the officer feels at ease.

'The Participants to the Encounter', as explained in the context of the constitution and operation of the self, provides the theoretical basis for an analysis of the means by which

(i) the professional police self is established by way of socialisation in the 'generalised other' of the officer.

Once established into their 'face' (which may be understood as their professional authority) police officers must maintain it not only before the other interactant but before others who are present at the encounter or will come to know of it in the future. Therefore, relevant to the analysis are

(ii) the protective and defensive face maintaining and face saving practices by which the police self, once established, is maintained during the progress of the other interactant through the criminal justice process.

The security of the self (or professional authority) of police officers is dependent upon the other participant continuing in the role in which they have been cast by the officers. A mis-definition on the part of officers undermines that authority. Relevant to the analysis, therefore, are the means by which

(iii) the self of the other interactant is constituted, that is, the name that they are given; and

(iv) the protective and defensive practices by which that name is maintained in their progress throughout the criminal justice process.

### **III. THE CONSTRUCTION OF MENTAL DISORDER**

The complexity of the processes that have been explained so far must now be focused on describing the social concept of mental disorder as it informs a police understanding of mental disorder.

The rules discussed in the foregoing sections of this chapter (and the generic term 'rules' has explicitly or implicitly included the rituals of social relations which have crystallized into legal and/or moral prescriptions or prohibitions) are interrelated within a basic matrix of

(i) setting - where violation is constituted by offences against norms governing the spatial and temporal location of the person.

(ii) appearance - where violation is constituted by offences against the norms

governing the physical presentation of the person

(iii) conversations - where violation is constituted by offences governing the etiquettes and rituals of self-presentation during face-to-face encounters.

Therefore, 'rule violations do not in themselves bring forth censure'; this occurs 'only when socially unqualified persons perform these acts, or perform them in inappropriate contexts' (Scheff,1966:39).

Further, in the preceding discussions, the 'aversionary tactics' (for example, Goffman's (1967(a)) 'corrective practices'), which are a feature of the interactive process, have emerged. As Scheff (1966:51) points out, a great deal of rule-breaking is 'unrecognised, ignored, or rationalised', in other words it is normalised or denied. Of 'transitory significance' (Scheff,1966:51), it never achieves the status of 'criminal', 'mentally ill', 'homosexual', 'alcoholic' and so on but remains evidence of a quirk of personality, a character flaw, a response to a crisis (Yarrow et al in Scheff,1967). Abnormal behaviour that passes unnoticed or unrecognised may be related to the degree of distance between the parties, distance being expressed particularly in spatial and social terms and in terms of knowledge. Where the putative deviant is on the periphery of social groups and relationships, is 'assigned to a background position of low importance' and is not 'the centre of explicit expertise' (Rock,1973:70) any unusual behaviour is more likely to escape notice or be denied.

Naming the behaviour as 'deviant' does not inevitably result in the person acquiring the label of, for example, 'criminal' or 'mentally disordered'. A 'deviant is one to whom that label has been successfully applied' (Becker,1963:9). When denial and normalisation have failed, the successful categorisation as 'deviant' can nevertheless be made only by those who possess sufficient power to do so. Although they cannot make any authoritative definitions of criminality or mental disorder, by the very fact that they can detain under the Police and Criminal Evidence Act 1984 or the Mental Health Act 1983 on the basis of that deviancy the police are so empowered (see Chapters 3 and 5).

Once labelled, the deviant acquires a role and the attendant characteristics which are evoked by its name.

It suggests someone who is *normally* or *habitually* given to certain kinds of deviance....who is literally a bundle of sinister and odious qualities

and which calls forth the response in others of 'rejection, contempt, suspicion, withdrawal, fear and hatred' (Cohen,1966: 24).



Where deviants 'break significant rules which are grounded in deep and widely held moral feelings' (and particularly where these rules are those of the criminal law), deviancy is perceived to be 'a total moral state which reflects the substantial self, or essential inner nature, of the wrongdoer' (Rock,1973:32). A successful attribution of deviancy has 'terrifying implications for the 'self' (Rock,1973:35). Whereas 'primary deviation', that is, the initial rule breaking,

at best has only marginal implications for the psychic structure of the individual....(s)econdary deviation is deviant behaviour....which becomes a means of defence, attack or adaptation to the overt and covert problems created by the societal reaction to primary deviation. In effect, the original 'causes' of the deviation recede and give way to the central importance of the disapproving, degradedational and isolating reactions of society (Lemert,1967 in Taylor,1971).

While these features of acquisition and maintenance of a deviant identity have been of somewhat undifferentiated applicability to particular categories of deviant, they do incorporate those who may be labelled as 'criminal' and/or 'mentally disordered' and who are to be found in the hands of the police. However, since the concept of mental disorder as deviance has been stressed throughout the chapter so far as a somewhat distinctive order of deviance, it is necessary to look at its concept in a little more detail. This will also act as a precursor to the literature to be discussed in Chapter 2.

#### **(i) The Construction of a 'Mad' Identity**

The pathway to mental disorder is paved with alternative designations.

Most norm violations do not cause the violater to be labelled as mentally ill, but as ignorant, ill-mannered, sinful, criminal, or perhaps just harried, depending on the type of norm involved (Scheff,1966:31).

Goffman (1967(a):141) adds, inter alia, 'culturally alien', 'arrogant', 'insolent', and 'vicious' to the list.

It is once these available options have been exhausted, where the behaviour cannot be rationalised under any other descriptive heading, that those who witness the behaviour will name it as mental disorder. The rules which are violated are 'residual rules', being those which govern what is 'natural, decent and possible' (Scheff,1966:32) in any social group. These terms are resistant to any other formal or informal articulation other than 'it goes without saying' (Scheff,1966: 34) or it is 'what everyone knows'.

The residual rules whose breach is symptomatic of mental disorder are equally resistant to classification. In answer to the question of whether there is any common ground

to be found between those rule violations (or, as Goffman (1967) terms them, 'situational improprieties') that may be treated as symptomatic of mental disorder, Goffman (1967(a):142) suggests that although the

distinction between symptomatic and non-symptomatic situational improprieties is certainly part of our folk conceptual apparatus for looking at people...it does not seem to have any fixed relation to the actual behaviour to which it is applied.

Therefore, there is no ascertainable consensus about which category (i.e. symptomatic or non-symptomatic) the behaviour falls into. Moreover, Goffman (1967(a):142) suggests that the diagnosis of mental disorder is often followed by a retrospective selection and agreement of the situational improprieties which indicated mental disorder to the diagnostician.

In naming the behaviour and the individual as mentally disordered, police officers will utilise everyday terminology that is indicative of impaired mental health and which diverges from the clinical categories of disorder (for example, schizophrenia) into which the person may (or may not) subsequently be placed by psychiatry. 'Specific stigma terms' descriptive of mental disorder are sources of 'metaphor and imagery in everyday discourse' (Goffman, 1963:5). Furthermore, and as discussed in relation to the self, the framework of the role of the 'lunatic' is present within the generalised other, a role which is informed by police commonsense conceptions and stereotypifications of madness. Therefore, police officers 'may impute a wide range of imperfections on the basis of the original one' (Goffman, 1963:5), mental disorder conjuring up such discreditable attributes as, for example, uncontrolled sexual behaviour; the capacity for massive and unrestrained physical violence.

[A]lthough the attributes ascribed to particular deviancies can be spurious, they will still shape the way in which the deviancy is handled by those who believe in the attributes (Rock, 1973, 21).

Conversely and importantly, such typifications may militate against the classification of behaviour as 'mad' since popular conceptions of 'madness' may be so misleading that certain sorts of behaviours are likely to be excluded from the definition (Rock, 1973:70) (and see further in Chapters 2 and 4). This is particularly so where behaviours are 'almost normal' or where they conceal an 'invisible abnormality'. According to Goffman (1963), people perceived as 'different' by virtue of, for example, overt physical characteristics of mental handicap, of deformity, of race and so on, are visibly stigmatized. The virtual identity imputed to them on first impressions may 'harden' into an actual identity - their 'real' identity

- with little or no tension between that first impression and the consequent emergence of more and detailed information in the course of encounters. However, tension may occur where the difference is covert, where it amounts to an invisible stigma not immediately revealed by appearance, demeanour or conversation and which may be a history or episode of psychiatric ill health, a criminal record and so on. Someone who appeared normal is now revealed as different and police officers in such situations may experience conflict in severing people from their initial role or in modifying it accordingly in the light of new knowledge and accommodating them in their new and 'tainted' role (Goffman, 1963). The concept of actual and virtual identity runs as a continuous theme throughout subsequent chapters and it will be developed in the following chapter in the discussions on would-be claimants to exemptions from criminal responsibility in the following chapter.

## **(ii) Constructing a 'Sick' Identity**

Notwithstanding that police officers have neither the professional status or the professional power to pass any other than a lay verdict upon the mental health of an individual, that lay verdict is a substantive preliminary diagnosis. In the same way that the symptoms of many common physical illnesses can be categorised with relative accuracy, either identifying the medical condition itself from assessment of the symptoms or acting to narrow down the choice to one of a small number of possibilities, it is a claim that the person's behaviour is symptomatic of *illness* even though the correct psychiatric conditions and their attendant nomenclature cannot be accurately specified. Officers may act as though it were a professional diagnosis in two fundamental and consequential respects.

Firstly, the officers may diagnose and dispose of the mentally disordered without calling for medical confirmation of the condition. For example, police officers on the beat who deal with people whom they diagnose as mentally disordered and who are creating some kind of nuisance but are presenting no real threat to others or to themselves may be subjected by officers to no criminal sanctions but merely be taken home (see further on low-visibility solutions in Chapter 3).

Secondly, the working consensus between officers and individuals must now continue on the footing that the latter are suffering from a sickness, a disease that consequently locates them in a particular deviant role.

Illness involves a recognition of the

impairment of the individual's capacity for effective performance of social roles and of those tasks which are organised subject to role expectations (Parsons, 1964: 112).

Therefore, norm violations are prescriptively or retrospectively explicable in the context of sickness. Moreover, according to Parsons (1964:113), the 'traditional' sick role has certain primary characteristics which are, firstly, that it is

a partially and conditionally legitimated state in which others are expected to treat the sick person with compassion, support and help.

Secondly, it forms

the basis of a series of legitimised exemptions from the fulfilment of normal expectations

in relation to everyday social obligations and relationships (for example, an inability to work; an inability to maintain a good temper with others). Thirdly, by reason of the incapacity,

the individual is not held responsible for his state, in the sense that he could be expected to become well through 'pulling himself together' by an act of will.

Finally, the sick role has

a definitely ascribed goal of action...namely to 'get well'

through active co-operation within a therapeutic regime.

Some modification is required in order that the concept of mental illness (and Parsons (1964:113) specifically excludes mental handicap from the ambit of 'illness') which, formerly and prior to the development of psychopathology was conceived of as insanity, can be accommodated within the 'already well established' role of somatic illness (Parsons in Kluckhohn & Murray, 1956:614).

Parsons (1956:614) suggests that where the sufferer is mentally ill the role difference is focused on the notion of responsibility. Not only are the mentally ill under a similar exemption from responsibility to recover by an act of will alone, they are also held not to be responsible in either their dealings with others or in recognising that they are ill and in need of treatment. He further suggests that this absence of responsibility provides the justification for the coercive practices that may be employed in relation to the mentally ill, for example, compulsory treatment.

It is the concept of madness as 'sickness' and the concomitant associations with 'responsibility' that provides the linkage between the commonsense (theorised from a symbolic interactionist perspective) and legal spheres and thereby the vital linkage between the symbolic interactionist perspective examined in this chapter and the theorisations that are loosely gathered around the notion of 'just deserts' in the next. A distinction between deviant categories that is crucial to the analysis of the empirical evidence has now emerged and it is a distinction which pivots upon the moral meaning of categories. Yet it is one that cannot be explored within the limitations of an interactionist approach (see below). The subject matter of this thesis can be described as the 'multiple rule breaker in the hands of the police' and this rulebreaker will eventually come to be named as 'mad' or 'bad' or as both together. While the symbolic interactionist literature stresses the adverse consequences of becoming named as deviant it does not take account of its benefits. In the world of criminal justice where deviancy is the norm and stigma is the outcome 'madness' can bear positive rather than negative connotations on the basis of its associations with sickness and therefore blamelessness and on the basis of its outcome of treatment rather than punishment (see further in the following chapter). The notions of 'responsibility' that have been examined in the context of the sick role are notions which surface in the concept of criminal responsibility. In this way 'moral verdicts' of mental disorder (made by the police who have the authority to make neither legal or medical diagnoses) are linked to legal verdicts of mental disorder made by the courts (within a criminal justice system of which the police are a part).

Therefore, the notion of 'deviant identity' is relevant to the analysis as follows -

- (i) to identify the moral meanings that the police attach to the category of mental disorder.
- (ii) to identify the characteristic features of the mentally disordered identity.
- (iii) to begin to identify the types of people who deserve (and who do not deserve) to be attributed that identity.

## **CONCLUSION**

Police officers diagnose mental disorder where behaviour is in breach of some or other taken for granted rules that regulate the behaviour of particular types of people in particular types of circumstances in which officers find themselves in the course of their work. Some people

whom the police will come to diagnose as mentally disordered have not breached any rules of criminal law. On the other hand, many others will have done so (see further below). Nevertheless, the mechanics of the processes described in this chapter by which extraordinary behaviour and the people who engage in it become defined as mentally disordered remain the same.

The chapter has explained how people who are in one another's immediate presence can 'know' about each other. Police officers know that people are mentally disordered by reading and interpreting the signs that are given off by, for example, persons' appearance or speech in settings of time and place, signs that are made sense of in terms of mental disorder (or criminality). Police officers' knowledge is reflexive. They draw upon their typographies of mental disorder in order to make sense of and understand the behaviour of others and that behaviour becomes a part of their experience of mental disorder and is incorporated into their stock of knowledge. Thus, the categories of rulebreaking behaviour that the police encounter are themselves structured by rules and expectations. So, despite the implication that mental disorder is a dustbin category into which every behaviour that will not fit in to any other category is thrown, it is, in fact, a dustbin category with rules about how those who are allocated to it should behave. While police knowledge about mental disorder can be described as that of a police commonsense with its typifications and attendant imagery that owes little to notions of illness, nevertheless their fundamental understanding of mental disorder is organised around Parson's (1964) concept of the sick role (above) and its legitimated exemptions from everyday and normal responsibilities. The sick role provides police officers with an outline of rules which those that they call mentally disordered must observe. Any departure results in the suspicion of fraud on the part of the other. And as people that the police define as mentally disordered are expected to observe the rules of the sick role so the observance of the rules of the sick role admit people into the category of mental disorder. This will be more fully explored in the context of disreputable and respectable classes in Chapter 2 and in Chapter 4 (V and VI).

Police officers are in particular relationships with people that they have to deal with (see Chapter 3) and, where there has been a breach of legal rules, it is one which is based on mistrust. Not only do officers expect that people whom they encounter in the course of their everyday work will more likely than not be 'guilty' of some kind of lawbreaking because previous experience indicates this to be the case. They also suspect lawbreakers whose behaviour is extra-ordinary of possessing a hidden motive. Moreover, the relationship that

the police hold with others is usually an asymmetrical one since they are in a position of some authority. Authority may otherwise be termed 'face' and, as made apparent in the course of this chapter, people invest a great deal in their 'face' in the course of encounters with others. The notions of 'mistrust' and 'face' are critical to the development of this thesis in further chapters and the explanation of their importance requires the introduction of a commonplace and traditional wisdom that is embodied in commonsense (that is *what everybody knows*) and which holds that

people who are mad are dangerous and people who are dangerous are mad.

This assertion, which will constantly be problematised in the course of the following chapters, has been so far only tentatively addressed through the symbolic interactionist approach to police encounters with rulebreakers.

Every time that police officers are called upon to deal with people who are behaving in extra-ordinary ways there is always the risk that the behaviour may be misunderstood and therefore incorrectly named. Officers have no desire to lose face, particularly before witnesses to the encounter or before their colleagues among the police or in the further criminal justice system. Therefore, mistrust is employed as protection against the risk that people may not always be what they appear to be. Moreover, people may not be what they appear to be because they have a hidden motive (and this motive will be discussed in some detail in the following chapter). It is these risks that form the basis for the discussions in the following chapter.

Before proceeding further, it must be noted that the explanations of the process of categorisation so far have been concerned with the naming of people as one or another type of deviant rulebreaker. However, when the concept of people who breach both social and legal rules, that is, 'the mentally disordered offender' is subjected to a more detailed analysis, it is apparent that further and other theoretical positions require consideration. Those who are classified as mentally disordered and who are deemed to have offended against the criminal law are 'doubly deviant'. Not only have they breached the rules of the criminal law, they have also breached the residual rules which govern social relations. As discussed above (in III The Construction of Mental Disorder'), the breach of significant rules results in some degree of adverse societal response to the rule-breaker and, where these rules are crystallised into legal (criminal) rules, there is a requirement that appropriate sanctions (punishments) be imposed. The conjoined roles of 'mentally disordered' and 'offender' forms a bundle of

complex concepts which are invariably unexplored in the interactionist literature on mental illness and deviance (for example Scheff,1966,1967; Spitzer & Denzin,1968).

The symbolic interactionist approach has so far been appropriate to deal with the mechanics of becoming named as mentally disordered and/or criminal. However, the approach is of methodological value and is a theoretically inadequate means with which to conduct an investigation into the ways in which the contingencies (for example, and particularly those of risk and danger) of the world outside the immediacy of the encounter impact upon the definitional process. Therefore it is an inadequate approach to fully explain police commonsense about mental disorder and for the following reasons.

- (i) Integral to the symbolic interactionist perspective is the notion that encounters are a series of negotiations where the identities of the participants (in terms of deviant categories) are not pre-given but are a far from certain outcome in terms of the relativities of context. If deviant behaviour is only deviant because people label it so (Becker,1963), then 'anything could be called deviant and nothing has to be' (Plummer in Downes & Rock,1978:96). Yet, as Plummer (in Downes & Rock,1978:96-97) points out in his review of the labelling perspective and response to the criticisms which are directed against it,

this enlarging of the field flies in the face of empirical reality where we commonsensically know that some acts are more deviant than others

and where, for example, "everybody knows that murder is illegal, that homosexuality is at least different' then 'our routine contexts' do not permit us to define them otherwise. Since 'we do not act in a world free of social meaning' (Taylor et al in Downes & Rock,1978:96), a sort of cultural vacuum, systems of pre-given meanings operate in social encounters which do not permit that any name be given to any behaviour. Therefore, the necessary consideration of these 'cultural contingencies and constraints' on meaning will be undertaken in Chapter 3.

- (ii) Beyond the pre-given social meanings, the 'what everyone knows to be rule-breaking', are the meanings that are 'what the police officer knows to be rule-breaking'. These meanings are constituted within the discourses of the criminal justice system, the juridical discourses of justice and responsibility and guilt and exculpation and mitigation. The interactionist perspective acknowledges but does not take as its central concern the issues of the 'wider social order' (Plummer in Downes & Rock,1978:115)



(that is, the criminal law and the institutions which interpret and enforce it), but rather the more immediate and intimate series of social conversations of which police/public encounters are but one example. The following chapter will address, inter alia, the legal and inextricably moral discourses which talk of the mentally disordered who violate the criminal law and the way in which 'justice' conceives of the conditions required to exculpate and mitigate blame.

- (iii) Beyond 'what everyone knows to be rule-breaking' and 'what the police officer knows to be rule-breaking' is the issue of the ways in which organisational authority (that is the authority of police officers) is exercised and is manifested in the interpretative interactive process. In police/public encounters, which the symbolic interactionist perspective would perceive as productive of negotiated decisions and outcome, there exists an 'inequality of bargaining power', an asymmetry of power distribution between the police, as state empowered agents of social control, and the (usually and traditionally) powerless groups that are policed. The whole of the interactive process and its outcome is consequently biased in favour of the powerful (Plummer in Downes and Rock, 1978). The discourses of power overarch the 'cultural' and 'legal' discourses from which the police draw their meanings of mental disorder. Therefore, and for example, perceptions of the risk posed by the extra-ordinarily behaved lawbreaker relates not only to the physical person of the police officer, but to their authority and to that of their organisation. This will be explored in Chapter 2.

As I noted in the Introduction to this thesis, police officers may have the task of categorising deviancy but they are not empowered to directly confer upon others a legal or medical status of mental disorder. Any such change must be authorised by other professional bodies during consequent medical examinations and legal trials. Behaviour which may be categorised into different social types of deviancy may be observable during the meeting between the police and the individual. These types are not mutually exclusive, the social world being populated with those who have breached a multiplicity of social and legal rules. However, law and medicine do not recognise, for example, 'alcoholics' and 'drug addicts' and so on as distinct legal and medical categories, rather they are adjuncts to those two fundamental categories of 'criminals' or 'patients'. Nevertheless, while people are in the hands of the police and subject to their jurisdiction, a process is set in motion which will start to shape them as 'mad' or 'bad' and set them on the road to eventual treatment or punishment.

## **CHAPTER 2**

### **Crime and Responsibility: Mental Disorder and Excusal**

#### **INTRODUCTION**

The previous chapter introduced and began to develop the notion that people who behave in extra-ordinary and unexpected ways arouse some degree of apprehension in others. The threat that such behaviour offers to others who are witness to it may be expressed through the term 'getting it wrong'. Getting it wrong means that behaviour will be misunderstood and misclassified, resulting in adverse consequences for one or all of the parties present. It was further suggested that these consequences are directly related to the 'face' or to the professional authority of those who make a mistake. This chapter seeks to examine in detail the concepts of getting it wrong and the consequent loss of face, positing the both of these as complex and crucial to criminal justice and police understandings of mentally disordered offenders.

In everyday encounters getting it wrong may result in no more than, for example, embarrassment. Nor do any particular repercussions necessarily flow from the misclassification of behaviour. In going about their daily business people often need do no more than give unexpected behaviour a name and then pass on. However, the daily business of police officers is that of sorting out situations across a spectrum of problematic social and criminal issues (see further in Chapter 3). Police officers have to make decisions and take courses of action based on their interpretations of and assumptions about the behaviour of others and this is rendered particularly difficult in circumstances where people who have breached the criminal law do not behave in ways that normal and everyday lawbreakers are expected to behave. While police officers are experts in defining and understanding normal criminals, when they classify lawbreakers as 'mad' these lawbreakers become typified as irrational, inexplicable and beyond comprehension. Further, 'madness' means 'sickness'. It is the possibility that these multiple rulebreakers may be sick that generates among police officers a fear that dominates juridical discourses about mentally disordered offenders and that is that, on account of their madness, some people might get away with their crimes. And it is 'getting away with it' as a consequence of 'getting it wrong' that is at the heart of the definitional process.

The legitimated exemptions from responsibility conferred by sickness which were discussed in the previous chapter are replicated in the criminal law in its understanding of

the legal effects of disordered states of mind at the time of and subsequent to the commission of offences. These legal effects are twofold. Firstly, the criminal law provides that mental disorder may be such that it amounts to an absolute or partially legitimated exemption from criminal responsibility and so constructs the defences which will be discussed below. Secondly, it provides that where the nature of the mental disorder is not sufficient to constitute an excusal or acquittal from responsibility, the medical condition of accused persons will nevertheless be acknowledged as a mitigation of the punishment that would usually follow upon a finding of guilt. To talk of a response to mental disorder that is common to the criminal law and to the police is not to suggest that the police are in any way authorised to bring about any legal effects from their naming of people as mentally disordered. That is for the court alone. Nor is it to suggest that the police are possessed of a legal understanding of the effects of impaired mental states upon criminal liability. In the absence of any specific legal training they do not (the effects that the police do have the authority to bring about will form the basis of Chapter 3). What is common to both is an understanding (which is fundamentally a moral one) about the requirement that people who knowingly break legal rules deserve punishment. And despite the fact that it is for the courts and not for the police to determine matters of guilt and punishment, the police nevertheless undertake their own informal trials conducted at the scene of events and at the police station in which such issues are decided.

Police officers and the law alike operate with the (rebuttable) presumption that lawbreakers are in 'normal' states of mental health, are responsible for their actions and, if found guilty, are deserving of punishment, not least because the 'normal' clientele of the police and criminal justice system are more often than not the legally sane, responsible and punishable people that they appear to be (and the mitigations of punishment at point of sentencing will be discussed in Chapter 3). Excusals of responsibility are relatively rare within the criminal justice system and the numbers of people who constitute an exception to the rule are limited. People who commit criminal offences and who are found to be mentally disordered derive what criminal justice perceives to be the advantage of acquittal or the mitigation of punishment. The fear that people may contrive to appear mad and, therefore, not always be what they appear to be on account of a hidden motive to 'get away with it' supplies the justification for the exercise of caution in respect of the 'would-be' mentally disordered. And the type of people who constitute that class, who would not hesitate to attempt deceit are the type of people who are inevitably to be found in police stations and courts. So, because it is believed that people may act as if they were mentally disordered in

order to secure an advantage, caution is exercised to ensure that only those who do secure a benefit are those who deserve to benefit. Therefore, rebuttal of the presumption can only be successfully challenged by the honest and the trustworthy among lawbreakers, by the 'really', 'genuinely' mentally disordered. In other words, the out of the ordinary and untypical lawbreakers.

This chapter, therefore, explores the concept of 'deservedness' which is both explicit and implicit in juridical talk about mentally disordered offenders. It is about the ways in which justice determines that people who do wrong deserve punishment and the ways in which the law can be used to secure that punishment. It is also about the ways in which justice determines that people who do wrong do not deserve punishment and the ways in which the law can be used to secure their excusal. And it is only through an examination of the concept of 'deservedness' as it is possessed by criminal justice that the concept as understood by police officers can be discovered.

The chapter divides into three parts. The first part discusses the rationales which comprise the concepts of 'punishability' and 'excusability' (I Justifying Punishment: Justifying Excusal), in other words, how lawbreakers become constituted as deserving of punishment or its mitigation. The second part (II Denying Criminal Responsibility: Mental Disorder as Excusal) situates punishability and the circumstances under which it may be denied primarily in the context of judicial decisions which form the basis of criminal justice understandings of responsibility and excusal. The third part (III Defining the (Un)deserving) describes the criteria for membership of the deserving and undeserving classes.

## **I. JUSTIFYING PUNISHMENT: JUSTIFYING EXCUSAL**

The legal prescription for punishment, followed during the course of a legal trial, is clear and objective in its terms. According to Ross (1975:2), a person

who has committed an offence thereby incurs *guilt*, though only *under certain conditions*, the person who is guilty of the offence is thereby also *responsible* for it; and the person who is responsible for the offence must be *punished* for it.

However, informal police trials take place on a somewhat different footing. In the previous chapter it was noted that while the police have no authority to clinically and formally diagnose a person as mentally disordered, they may nevertheless so determine, taking decisions and proceeding on courses of action as though that person were sick and consequently treatable. These decisions and courses of action may be founded upon

predictions made by police officers as to what happens to 'sick' offenders, particularly with respect to the future response of the further criminal justice system to those persons and to their eventual disposal. So, for example, they may predict that where a person who has committed an offence and appears to be gravely disordered, there is every likelihood of an acquittal on the grounds of insanity. These predictions may never realistically be capable of realisation in that, for example, the defence of insanity is rare in its being pleaded and even rarer in its success.

It was further noted in the Introduction to this chapter that it is not within the police function to formally attribute guilt (or innocence) nor, as an investigative, evidence-gathering body, is it necessary for the police to satisfy themselves as to whether people are guilty and to mete out appropriate and deserved punishment. Nevertheless, police officers will take decisions and proceed on courses of action as though that person were guilty and consequently punishable. This process may be explained as one of 'moral censure' (Ross, 1975:26). Conversely, the absence of, or minimal disapproval of behaviour (and morality does recognise the existence of excuses and justifications (Ross, 1975:15)) is related to the decision that people are not responsible for their behaviour, are not guilty and do not deserve punishment.

These moral judgements, which are expressive of disapproval of behaviour, are not exclusive to informal police trials but, as will become apparent in the second part of this chapter, are translated into legal form and undertaken in the course of criminal proceedings. Since there is no 'morality in itself', the term 'moral censure' is taken to mean the typical outlooks or views that are predominant within a certain cultural group (Ross, 1975:29). Therefore, this chapter is concerned with the attribution of punishability or excusability that is made not at the conclusion of a legal trial but as it represents the outcome of a moral trial. It is concerned to explain, in terms of extra-legal factors, what it is that makes lawbreakers deserve to be punished or to be excused.

Consequently, a person who commits an offence and behaves abnormally can be conceptualised in one of three fundamental ways.

The person may be perceived as 'punishable' and the abnormal behaviour normalised or rationalised or explained as something other than indicative of illness.

The person may be perceived as 'excusable' and the abnormal behaviour perceived as sickness, the lawbreaking as its symptom, and relegating the violation of the criminal law to a position of peripheral importance.

The person may have to be dealt with as what falls most accurately under the

description of 'mentally disordered offender', as both punishable and excusable, some lawbreaking behaviour (for which one is responsible and therefore punishable) competing with some abnormal conduct (conduct which is suggestive of sickness, which condition evokes sympathy and a legitimated exemption from responsibility for one's disorder and for its symptoms).

These three models are located within the discourses to be discussed below and in Chapter 3 and lie at the heart of this thesis, underpinning the analysis of the empirical evidence.

### **(i) Censure and Bad Behaviour**

Unlike its formal counterpart, censure 'pre-supposes guilt in the sense that it is only *justified* where guilt can be assumed' (Ross,1975:28), thus by-passing the necessity to order and establish the prescriptive links between guilt, responsibility and punishment as proposed by Ross (1975:2) above. While justice formally demands that punishment concludes a procedure which has established the necessary pre-conditions of guilt and responsibility (Ross,1975:2), the punishability (or otherwise) of a person is decided upon extra-legal grounds. For example, it may be decided upon by police officers immediately upon their meeting or even before it (for example, where the suspect is not immediately located and where the nature of the crime and/or the victim is such as to excite substantial antagonism towards the person who has committed the offence). Since the law requires that guilt be established on legal grounds rather than assumed on moral ones, justifications for punishability or excusability and any consequential actions taken on the basis of such judgements must be framed according to known rules and avoid presenting the appearance of arbitrariness and subjectivity.

The motivating force behind moral censure is, in part, an emotional one.

Censure always contains an element of emotion, a dissociativeness at least, anger maybe, though not necessarily of a personal nature, but rather on behalf of the values and general order of things which the given morality expresses. (Ross,1975:26).

Censure (and punishment) is generally permissible contingent upon a harm or a moral wrong having been committed (Finkel,1988:131-2) (and the moral harms that people commit will form the final part of this chapter). Once satisfied as to the fact of this harm or wrong, once lawbreakers are understood to be punishable, police officers may draw justification for their punishment from diverse rationales. A somewhat pragmatic and dispassionate response tends to demand that 'by a utilitarian calculus of sorts' and 'by

invoking the greater good for the greatest numbers' (Finkel,1988:140), punishment of those who have done harm is necessary to deter others from following the same course. However, a more subjective approach may be framed within the terms of retribution for the past act, suffering being inflicted in proportion to the wickedness of the deed. As explained in the Introduction to this chapter, criminal justice perceives mental disorder as an 'excusing condition' which exculpates the offender (Finkel,1988:227) or as a factor in mitigation following conviction, rendering unjust the imposition of any form of just desert for offending behaviour, whether as a deterrent or retributive measure. Nevertheless, criminal justice does claim a legitimate interest of deterrence in relation to the 'would-be mentally disordered' and that is to deter those who may falsely attempt to pass themselves off as 'insane' (Finkel,1988:227). (The threat of punishment is of no effect where the person is 'genuinely' 'insane' (Hart,1968: 41), or, indeed, of 'diminished responsibility'). Justice equally claims a legitimate interest in retribution over this same class of lawbreakers, particularly as evidenced in the form of the diminished responsibility verdict where impaired mental states do not necessarily result in the mitigation of punishment (see below in the second part of this chapter).

Moral censure may be given its fullest voice where there have been committed

acts of wickedness so gross and outrageous that self-protection apart they must be prevented as far as possible at any cost to the offender and punished if they occur with exemplary severity (Stephen in Hart,1965:33).

This denunciatory aim has been espoused, inter alia, by Lord Denning (in Hart,1965:38-9) who claims that it is

a mistake to consider the object of punishment as being deterrent, or preventive or reformatory or nothing else. The ultimate justification of any punishment is not that it is a deterrent but that it is the emphatic denunciation by the community of a crime.

In contradistinction to all of the above is set the individualistic, psychotherapeutic order, at the best (purportedly) curative of the mental disorder that both law and medicine agree to be afflicting the offender and at the least (purportedly) alleviating the most excessive of its symptoms. It is within these rationales that criminal justice seeks to accommodate the often complex and contradictory response aroused by crimes committed by the putatively disordered.

## **(ii) Censure and Sickness**

There are occasions where the nature and circumstances of the crime may render it resistant to common understandings and explanations other than one which suggests that the 'act itself bears insanity stamped on its very face' (Forbes Winslow in Finkel, 1988:61). In other words, the lawbreaking is such that it cannot be explained in terms of normal criminal behaviour. There are equally occasions where the nature and circumstances of the extra-ordinary behaviour of the lawbreaker are similarly suggestive of mental disorder. At the same time, the nature and circumstances of its commission are perceived to make the crime an act of wickedness such as demands that the offender should undergo some measure of suffering, of punishment for those actions. In consequence, a tension arises between badness (blame) and sickness (blamelessness) which presents itself in respect of the disposal of the offender.

While the criminal law recognises that mental disorder may 'cause' crime and, by excusing guilt, excludes the possibility of a conviction, it nevertheless provides that some form of therapeutic measure will almost invariably (in the case of a successful plea of insanity - see below) and possibly (in the case of diminished responsibility - see below) follow a complete or partial exculpation. There is equally a recognition that the crime may not be caused by the mental disorder, that 'guilt' and 'madness' are two separate entities, the former deserving of conviction which is followed by necessary treatment of the latter. These legal provisions which relate to crime and mental disorder reflect the notion espoused by Ross (1975:153) that moral condemnation and human sympathy are capable of co-existence since the more one knows of a person, the more one understands and consequently is prepared to offer a measure of forgiveness. This knowledge and understanding should 'mitigate the anger we feel towards the man but not our judgement of his deed' (Ross, 1975:155).

Moral anger in such circumstances *should* be satisfied by the fact of conviction followed by some form of mitigated and reformatory sentence, this, where the offender is mentally disordered, being one of treatment. However, theory does not translate neatly into practice. The commonsense of criminal justice imputes a causal link between mental disorder and crime where none exists nor is legally demanded (see the second part of this chapter below and Chapter 4, sections V and VI) but which provides the underlying rationale for talk of people getting away with it. To be mentally disordered is taken to mean an avoidance of the rigours of punishment and a substitution of the benefits of treatment. This is notwithstanding that the benevolent treatment (Finkel, 1988:230) of rehabilitation is often, like punishment, coercive in its nature (particularly where the liberty of the person is



lost). It is notwithstanding that the actuality of treatment involves degradations and humiliations (Goffman,1961:24) which have fateful consequences for the person (such as dispossession of the roles of a previous and everyday life; of civil rights; of personal possessions; of the usual physical appearance; of the privacy of the bodily and the psychological 'person' and so on (Goffman,1961:24-26)). It is notwithstanding that treatment takes place in institutions and environments which do not differ significantly from their penal counterparts, not least in terms of the conditions of existence that are sustained within them. The common perception of treatment (whether hospitalisation or some other form of therapeutic regime) connotes the ministrations of professional expertise and compassionate care in restorative and wholesome environments and this proves somewhat difficult to accord with the expected disposal of persons convicted of criminal offences.

Conviction is an invocation of the law's demand for punishment (Ross,1975:24). That demand cannot, in all cases, be satisfied by an order for treatment which then becomes seen as 'getting away with it', as the product of a fraudulent but successfully engineered defence, as a singular exception to the rule of law (all cited by Finkel (1988:124 as 'popular, *but erroneous*, assumptions' about the insanity verdict), as escaping the consequences of blameworthy actions. Conversely, punishment, not only in its justificatory aims but in its actuality, is perceived as inappropriate and inhumane, as causing needless suffering (Hart,1968:41) where the person is seen to be mentally disordered.

Furthermore, criminal justice and the police officers who operate it are, upon immediate examination, apparently unable to reconcile the demand that the guilty be punished with the demand that the sick be treated; that the suffering of mental disorder is eased while suffering for the offending behaviour is imposed. However, the remainder of this thesis is devoted to revealing the ways in which the two demands can be and are reconciled. The second part of this chapter (below), therefore, is concerned with the techniques of reconciliation employed by the judiciary.

Reform (under which heading is included 'psychological treatment') runs counter to principles of justice which state that like cases should be treated alike and that punishment should be proportionate to the crime (Hart,1968:25). As Hart (1968:26) points out, reform is not an alternative General Justifying Aim of the practice of punishment but something the pursuit of which within a system of punishment qualifies or displaces altogether recourse to principles of justice or proportion in determining the amount of punishment.

Therefore, treatment is an idiosyncrasy within a system that talks of guilt and conviction and punishment; of deterrence and retribution and denunciation. Treatment runs

'counter to the customary morality of punishment' (Hart, 1968:26), not only where punishment is an abstract concept but also where it is practically applied. There is no disposal available to the court which orders that treatment and punishment be administered at one and the same time. Those medical professionals who are in the business of dispensing therapeutic measures are not in the business of administering some form of punitive suffering. (Any 'suffering', for example, ECT treatment, that may occur in the therapeutic environment being incidental to or justifiable on the basis of its curative or remedial potential).

For police officers dealing with suspects at the very first stage of the criminal justice process, any treatment disposal can be no more than a nebulous and indeterminate future prospect. Nevertheless, there is always the danger that others of the criminal justice system will get it wrong, that they will make a different sense of the extra-ordinary behaviour of lawbreakers than that of officers, defining those that officers 'know' to be mad/bad as bad/mad, so transposing punishability into excusability (and vice versa). Police officers maximise the possibility of securing what they believe to be a just outcome which ensures that the punishable are punished and the excusable are not. The next part of this chapter describes the methods (i.e. techniques of reconciliation noted above) as they are employed by judiciary and suggests the application of these strategies to police officers.

## **II. DENYING CRIMINAL RESPONSIBILITY: MENTAL DISORDER AS EXCUSAL**

Ross (1975:3-4) suggests that guilt may be talked of as a '*burden*' of blame, as 'something unpleasant and undesirable'. Equally it may be talked of not 'as a consequence of an offence but as a presupposition of responsibility for it' and therefore guilt

has to do with the perpetrator's state of mind at the time of the act, and the statement that A is guilty is a claim to the effect that his mental state satisfied the requirements which are necessary for his act to impose a burden of guilt upon him and make him responsible and liable to punishment (Ross,1975:4).

The difference between legal and moral responsibility rests upon their diverse substantive rules

rather than to any variation in meaning of responsibility when conjoined with the word 'moral' rather than 'legal' (Hart,1968:225-6).

As stated earlier, attributions of punishability or excusability which are made on moral grounds have to be given the gloss of legality in their justification according to a known rule. This part of the chapter describes this process.

### **(i) Knowing the Guilty Mind**

The burden of blame is contingent upon the imputation of guilt and such imputation requires that the 'offences have been committed under certain psychological circumstances, having to do mainly with will and understanding' (Ross, 1975:14). Formal and informal trials, therefore, inquire into rather elusive mental processes concerning what lawbreakers knew or believed or foresaw or intended and so on and, where necessary, into the effect of mental disorder upon their free will (Hart, 1968:31-2). The composite legal term for these subjective requirements is that of *mens rea*, the 'guilty mind' which may generally be satisfied by proof of intention, knowledge, recklessness or, more rarely, negligence. The counterpart of *mens rea* is *actus reus* (legal orthodoxy distinguishing the two elements in the doctrine '*actus non facit reum nisi mens sit rea*', that is, persons cannot be criminally responsible for an act unless a state of mind, prescribed by law, is present) which requires the fulfilment of objective and factual conditions in order that particular people may be, on the evidence, rightly called to account for their actions. On the other hand,

the imputability requirement.....excludes liability when the mental state of the offender departs in some significant degree from that of the normal adult (Ross, 1975:14),

inter alia, where the offender is mentally disordered. Since the fundamental and rebuttable presumption of criminal law is one of sanity, accused persons who claim to suffer from a condition that has, to some degree, affected their sanity subverts the 'natural order of things', confounding everyday expectations within the criminal justice system and consequently being treated with the gravest suspicion. While the criminal law provides for conditions of excusal, it must, at one and the same time, set limits to their being invoked and to their proliferation. From the recognised difficulties of ascertaining the 'truth' of defendants' psychological (i.e. *mens rea*) conditions, it invariably follows in the course of judicial discourse that accused persons will attempt to deceive the courts into believing that the condition of their mental health gives grounds for excusal.

According to Hart (1968:19-20), that persons do actually plead insanity (and other related defences of mental disorder) illustrates the feasibility of deception and

(t)he belief that such deception is feasible may embolden persons who would otherwise risk

punishment to take their chance of deceiving a jury in this way.

Moreover, successful deception would permit the guilty to go free, or, at the least, secure treatment in place of punishment. Since those who undertake formal and informal trials must beware of the duplicitous, the privilege of abstracting certainty from ambiguity is accorded to the expert. As Szasz (in Clyne, 1973:97) explains:

The court has a set of rules by which it orders its behaviour. It does not feel guilt if it convicts a man according to its set rules. However, once it is told that it must not punish a man who is 'insane', it must have assurance that the man is 'sane'. Accordingly, the responsibility (and the need to dispose of possible feelings of guilt) is shifted to the psychiatrist.

Despite their apparent subservience to the informed opinions of medical experts, those who possess expertise in matters of crime and criminals, in badness rather than madness, are often persuaded that their skills entitle them to know best. Therefore, where psychiatric opinion asserts that a lawbreaker who behaves in an extra-ordinary way is 'sick' or 'sane', such opinion may contradict what 'everybody knows' (inter alia, every judge or lawyer or police officer) to be true. And this truth is that for any number of a multiplicity of reasons, the accused is in fact a person who deserves to be punished but who has succeeded (or is in danger of succeeding) in 'getting away with it'. As Carlen (1976:114) points out,

what 'everybody knows' has to be continuously related to some operant symbol in which 'everybody trusts', such as law, knowledge or religion.

Juridical talk of deceitful and deceiving defendants who attempt to manipulate justice by feigning mental disorder legitimates a suspension of trust in the 'operant symbol' of medicine and towards a privileging of the law. This is despite the fact that the law is invariably powerless to substitute its own diagnosis of 'badness' for a clinical assessment of 'madness' since for the judiciary and the jury to ignore unanimous medical verdicts of mental disorder would risk the overturning of the legal verdict upon appeal. (The converse of this holds good in relation to the excusable). Consequently, the 'deep and persistent intuition of common men and the common law over the centuries' which asserts that mental disorder 'has a distinctive bearing on culpability' (Fingarette & Hasse, 1979:3) is invoked on behalf of that particular offender who meets those other than medical criteria that 'everybody knows' to be associated with the presence of madness (see further in the third part of this chapter and in Chapter 4, sections IV, V, VI).

During the course of any trial, accused people are given the opportunity to offer

explanations for their behaviour and these may amount to an excusal of guilt. However, and as distinct from the police trial, the 'story' (about actus reus and mens rea) that may be told and that a court may hear is formally circumscribed by rules and practices which debar particular facets of that story. For example, the formal rules of evidence only exceptionally permit the admission of evidence as to previous convictions or as to the accused person's involvement in similar crimes; on the other hand, the legal representatives of the accused may determine that particular evidence is not to be submitted. (So it was, for example, in the case of Timothy Evans, whose degree of mental impairment was not seriously treated as an issue at his trial, and who was convicted of killing his wife. Evans was subsequently posthumously pardoned when the crime was attributed to his landlord, Christie, a necrophile who had murdered a number of other women. The brief prepared by Evans' solicitor for the defence stated that there was a suggestion in the medical evidence that 'there might have been an attempt at sexual penetration after death' and stated that 'the case is sufficiently horrible without disgusting surmises of this nature being introduced into the minds of the jury' (Kennedy,1971:153). Since Evans' guilt was presumed by police, prosecutors and defence lawyers alike to be certain, the evidence was erased from the story, on the basis that it would make the case against a guilty man appear even worse (Kennedy,1971:153)). This 'best interests' approach, taken by those who know best in the interests of those who are not presumed to be capable of knowing best, is valuable where courses of action are taken that are legal and proper and yet may appear, for example, to be in opposition to police commonsense or to bring about adverse consequences for those on whose behalf they are taken. To give every appearance of acting unselfishly in the best interests of others, particularly where those others are the lawbreakers themselves, is to provide a moral justification (and a self-disinterested one) which is supportive of the legal justification (see Chapter 5).

Police trials, however, have access to a plethora of sights and sounds (for example, the immediate scene of the crime and its aftermath) and to people (for example, distressed and traumatised witnesses and victims: bizarrely behaved and dishevelled perpetrators) and these constitute 'reality' for police officers. As this 'reality' is given meaning parts of the story are similarly erased and the 'true' version is then presented to others of the criminal justice system in verbal and or documentary forms. These shape the ways in which others understand the lawbreaker - as mentally disordered or otherwise (see Chapter 5).

Even express statements as to the reasons for the offending behaviour are professed by the judiciary to be excluded from the legal trial. In order to be heard, explanations as to

motive which appear important in terms of commonsense must be rendered into some acceptable form, that is, they must be translated by legal experts into the language of mens rea. However, there are indications that evidence of motive is talked of in terms of evidence of mens rea in order that the 'correct' result be achieved, implying that the

courts have ample opportunity to take account of the motives of those with whom they sympathise at the same time as they pronounce motive legally irrelevant (Lacey et al,1990:32-3).

Therefore, such causative factors as adverse social circumstances, alcohol or drug addiction may be taken as indicative of punishability or excusability on the basis of their interpretation as a moral harm or otherwise. These matters can be employed to influence the outcome for lawbreakers in the further criminal justice system on the basis of informed guesswork by police officers as to the response of the prosecutors, the magistrates and so on (see above).

## **(ii) Guilty and Innocent Lawbreakers**

### ***(a) Drawing the boundaries of insanity***

The fundamental precept of the criminal law (and one which is held by police officers) asserts that

every man is presumed to be sane and possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved (Tindal,C.J. in M'Naghten (1843)).

Therefore,

a person liable to be punished should, at the time of the crime, have had the capacity to understand what he is required by law to do and not to do, to deliberate and to decide what to do, and to control his conduct in the light of such decisions (Hart,1968:218).

Mental disorder may render such capacity absent (insanity), or impaired (diminished responsibility, infanticide) or may render an accused person incompetent to stand trial (unfitness to plead). As will become apparent, in constituting these 'defences of mental disorder' criminal justice gives with one hand and takes away with the other.

Since the 'mere existence of some mental incapacity is not per se exculpatory' (Fingarette & Hasse,1979:15), if mental abnormality is to constitute the defence of insanity, the M'Naghten Rules (1843) require that there must be present, firstly, a defect of reason which, secondly, must have arisen from a disease of the mind and that, thirdly, this disease of the mind resulted in persons not knowing the nature and quality of their acts or not

knowing that they were wrong. According to Walker (1968:28), these Rules adopted the traditional legal concept of the mad as beasts (the mad 'are not far removed from the brutes' (Bracton cited by McAuley,1993:18)) and its analogies with the irresponsibility of those below the age of discretion, stating that

it is not every frantic and idle humour of a man that will exempt him from justice and the punishment of the law.....it must be a man that is totally deprived of his understanding and memory and doth not know what he is doing, no more than an infant, than a brute or a wild beast (Tracy,J in R v Arnold, 1723 in Walker,1968:56)).

This concept was combined with the 'right/wrong' test, that is, the mental disorder was such that the accused person was unable to distinguish right from wrong (McAuley,1993:20). As McAuley (1993:24) points out,

the effect of the Rules was to confine the insanity defence to the small class of cases where the accused's psychosis is marked by (severe hallucinations leading to) a loss of contact with physical reality or the total disintegration of his moral sense.

Thus, only exceptionally inexplicable behaviour is explained in terms of insanity, thereby constituting an excusal on the basis that such behaviour could not be willed and so its actor could not be held responsible. The requirement of the Rules that a causal connection between the mental disorder and the behaviour (i.e. that the accused would not have behaved in that way but for the mental disorder) be established is, while coherent and sensible in the abstract, nevertheless problematic in practice. The courts' only concern (and medicine must provide assurance to this effect) should be that the accused was mentally disordered at the time of the commission of the offence. However, having acknowledged the impact of mental disorder upon guilt, the boundaries of insanity close to exclude the undeserving but not so tightly as to exclude the deserving. The criteria by which the diverse claimants to insanity are judged are so strictly drawn in order to prevent the opening of the floodgates of exculpation that the defence is rarely successful (diminished responsibility being more often pleaded). Moreover, the more narrowly that the 'true' madness of insanity is limited, the more stereotypical the 'truly' mad become. In confining absolute excusal to the truly bizarrely behaved, the unworthy contender is always challenged with the accusation that since everybody knows how the truly mad behave, anyone can act out the part of insanity. Mistrust becomes, thereby, a matter of self-justification.

That success hangs upon the worst excesses of madness denies any purported benefit to the insane since such people cannot under any juridical, medical or commonsense

circumstances be allowed to go free. The conclusion must inevitably be one of incapacitation by way of treatment.

The legal construction of insanity does not excuse those people who experience some failure of will or some form of irresistible impulse, who act accordingly yet simultaneously appreciate what they are doing and that it is wrong but whose abnormality of mind prevents their exercising any behavioural control. Nor does the 'absence of knowledge' concept of insanity accord with the notion that the exculpatory nature of the defence is traditionally rooted in the involuntariness of the behaviour and that it is to be explained in terms of an absence of mens rea.

The maxim '*actus non facit reum nisi mens sit rea*' is so often repeated when the exemption of the insane is under discussion that its applicability to the insane is never questioned (Walker, 1968:40).

Instances of the mad committing crimes while under a complete misapprehension as to the 'nature and quality' of their act or as to its 'wrongness' are rare (it is rather the case that they act with single minded purpose, for example, they intend to kill the victim, for whatever reason, and their behaviour is directed towards that end (Walker, 1968:40)). Evidential satisfaction that accused persons know what they are doing renders associated matters legally (but not necessarily commonsensically or even medically) irrelevant. For example, the belief that one is an avenging angel, instructed by God to kill prostitutes is not indicative of insanity since one is aware of the nature and quality of those acts (Norrie, 1993: 179).

#### *(b) Culpability and self-induced disorders*

People who bring about or contribute to their own disordered states of mental health attract censure and cannot expect to take advantage of the defence of insanity. In its quality of behavioural involuntariness, insanity cuts across the other and related defences of automatism and intoxication, both of which, if successfully pleaded, result in complete acquittal. Herein lies their danger since, unlike insanity, where the special verdict has been little more than a euphemism for compulsory and indeterminate confinement (subject to the changes implemented under the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 which provides for a range of disposals and allows that restricted and indeterminate hospital orders are mandatory only in cases of murder), the morally culpable or the recurrently criminal may go free.

Where accused persons raise the defence of intoxication (and intoxication is taken to refer to the effect of alcohol or drugs), they are making a claim which goes to the heart of



the legal doctrine of *actus non facit reum mens nisi sit rea* (which, *inter alia*, specifies that conduct must be willed) by asserting that, due to their intoxicated state, they did not know what they were doing, that their actions were involuntary and that consequently they must be acquitted of any guilt. Such a claim has traditionally been met with judicial and moral disapproval. Suspicion equally attaches to the motives of those who plead automatism, it being a 'quagmire of law seldom entered nowadays save by those in desperate need of some defence' (Lawton CJ in *Quick* (1973) in Smith and Hogan, 1993:16). The defence is also one of involuntariness where people engage in behaviour of which they claim to be unconscious.

It was explained above that to be mentally disordered is to observe the rules of the sick role. Access to the legal defences means that it is also to observe their rules. These rules demand that people bear no responsibility for their impaired mental state or for their lawbreaking activity while in that state. Therefore, the law feels unable to excuse criminal behaviour which is directly associated with conditions and their symptoms that lawbreakers have somehow brought upon themselves, for which they are somehow to blame. On the other hand, and while maintaining the doctrinal demand that conduct must be voluntary to be punishable, the law must equally offer an avenue of escape for those few but worthy defendants whom it wishes to exculpate (Norrie, 1993:119-120). Resolution of the difficulty in distinguishing between blameworthy/voluntary and blameless/involuntary behaviour is enabled by a judicial investigation into the moral conduct of accused persons which, like its counterpart in the police station, is concerned to discover the circumstances which led up to their 'automatous' state. The issue of fault is thereby shifted from the 'automatous' condition of lawbreakers to the condition under which they became 'automatous' (Norrie, 1993: 119-120). Therefore, such states as prolonged and persistent intoxication can be attributed guilty or innocent explanation, as the commission of a moral harm or as symptomatic of a condition beyond the control of the sufferer (see the third part of this chapter and Chapter 4).

Legal excusal for the would-be automaton rests on an ability to prove that the precipitating condition was 'a transient non-recurrent mental malfunction caused by external forces which produces an incapacity' to control behaviour (*R v Falconer* (1990) in Jefferson, 1992:231). Excusal may safely be granted where these 'external forces' are seen to possess 'the feature of novelty or accident' (Lord Lane CJ in *R v Hennessy* (1989) in Smith and Hogan, 1993:18), to be somehow beyond the power and control of the accused, for example, where there is a blow to the head, an anaesthetic is administered, there is an unexpected reaction to prescribed medication and so on. Should, however, the 'forces' be internal to the accused, and the courts have held these to include, for example, diabetes and

epilepsy, then there is a preparedness on the part of the judiciary to recognise blamelessness on the basis of insanity. But this apparently humanitarian response of justice to the intoxicated and the unconscious is, in fact, utilised as a weapon of deterrence which is instrumental in cutting off the unworthy from acquittal. That a finding of insanity, with its often undesirable treatment disposals, is even a possibility is sufficient to coerce some accused people (for example, Sullivan (1983) in Smith and Hogan, 1983:18, an epileptic accused of a serious assault in the course of a seizure) into abandoning the defence in favour of a 'normal' plea where, if convicted, it culminates in some form of penal disposal. Police officers can also impose penalties upon lawbreakers who invoke some form of as yet medically unsubstantiated mental disorder as some form of as yet incoherent legal defence or mitigation of punishment to be dealt with in a trial at some indeterminate future time (and these penalties form the substance of Chapter 5, section III).

Within the diverse classes who constitute putative automatons (or the intoxicated) are those whom the law wishes to incapacitate (particularly where there is a likelihood that violent behaviour will recur) and those whom the law wishes to punish. This latter category is largely composed of people whose involuntariness, while legally indisputable, is nevertheless self-induced. So, for example, where a diabetic fails to correctly manage his condition, thereby inducing an autonomous state during which he engages in criminal behaviour (violent behaviour in the cases of *R v Quick* (1973) and *R v Bailey* (1983) (in Jefferson, 1992:121) and driving offences in *R v Hennessy* (1989) (in Smith and Hogan, 1993:18), the court may perceive that mismanagement and therefore that person to be morally culpable and so punishable. The conversion of automatism (and its subsequent absolute acquittal) into insanity (and its potentially coercive treatment) is judicially engineered through the meaning that may be placed upon 'disease of the mind'.

'Disease of the mind' is a legal and not a medical concept. It is irrelevant whether this disease is of physical or mental origin since

'mind' in the M'Naghten Rules is used in the ordinary sense of the mental faculties of reason, memory and understanding....it matters not whether the impairment (of these faculties) is organic, as in epilepsy, or functional, or whether the impairment itself is permanent or is transient and intermittent, provided that it subsisted at the time of the commission of the act (Lord Diplock in *R v Sullivan* (1983) in Smith and Hogan, 1993: 20).

It is in this interpretation that there is a substantial departure by the law from medicine and from commonsense. It has been authoritatively stated (by Lawton LJ in *Quick* (1973) in Jefferson, 1993:229) that judges should follow in a 'commonsense way their sense of

fairness' and in respect of the particular accused in that case (who was suffering from hypoglycaemia, a deficiency of sugar in the blood resulting from a failure to eat after taking insulin) it was difficult to assert anything other than that

(c)ommonsense is affronted by the prospect of a diabetic being sent to a (mental) hospital when in most cases the disordered mental condition can be rectified quickly by pushing a lump of sugar into the patient's mouth (Lawton LJ in Quick (1973) in Jefferson, 1992:229).

However, the law has subsequently transformed diabetes into madness, holding that where a person fails to administer insulin (thereby inducing a state of hyperglycaemia where the blood sugar is excessive), the 'internal' factor of the physical disease renders him insane (for example, *R v Hennessy* (1989) in Smith and Hogan, 1993:17-18). The reasoning which is intended to justify the punishment of those who deserve it constructs an 'insane' defendant whom 'everybody knows' to be 'sane', creating a tension between legal and medical and common sense.

Police officers equally must keep their options open in respect of the undeserving and deserving lawbreakers and are similarly prepared to construct medical and quasi-medical conditions as indicative of 'self-induced' punishability or 'out of control' excusability, this forming the content of Chapter 4, sections IV, V and VI.

It appears paradoxical that justice may implement mental disorder as an instrument of either compassionate or retributive coercion and this primarily dependent upon its resultant treatment disposal. Where criminal justice talks of the would-be insane, it implicitly restates what 'everybody knows' (and 'everybody denies'), that treatment can be punitive. However, this paradox may be resolved by a consideration of the consequences of a successful plea of insanity. As indicated above, the defence is confined to those who exhibit the excesses of madness and by the very nature of their behaviour such people are inevitably judged by not only the courts but by doctors to pose a danger to themselves or to others. Thus their acquittal from guilt is least likely to be followed by an order that allows them to go free (for example, an order that requires minimal out-patient hospital attendance) but rather one designed to incapacitate which is restrictive and coercive (and not dissimilar to punishment) in nature. In other words, the insane do not get away with anything. Getting away with it becomes possible only where the treatment disposal is less restrictive and coercive than its punitive equivalent and such opportunity is afforded by the defence of diminished responsibility which is now to be discussed.

### **(iii) Widening the Ambit: Impaired Responsibility and Excusability**

While naming people as mentally disordered can bring about the treatment of or incapacitation of the bizarrely behaved or punish the morally guilty, such naming can equally mitigate the worst effects of punishment for the morally innocent, those who criminal justice posits as the deserving classes. The concept of mental disorder as impaired responsibility creates a defence for the decent, for people who are not 'real' criminals and commit crimes in circumstances where no defence would otherwise exist. These are the type of people who have broken the law but are nevertheless not members of the classes who are normally expected to break the law. The principles of the legal defences which follow are commonly adopted in informal police trials.

Hart (1965:16) attributes to the word 'responsibility' the meaning of 'capacity, so far as this is a matter of a [person's] mind or will, which normal people have to control their action and conform to law'. This normal capacity of control may be impaired by some or other mental condition which the law categorises as 'diminished responsibility' or 'infanticide', these being statutory defences which acknowledge some form of 'partial insanity' or 'temporary insanity', including the inability to resist acting impulsively. None of these form a part of the legal concept of insanity. However, in legal trials the partial exculpation of the defences is offered only where the offence is one of unlawful homicide and only by way of a mitigation of the penalty that would otherwise be awarded on a conviction for murder. Therefore, a manslaughter verdict is substituted for that of murder and, in consequence, a discretionary penal or treatment disposal substituted for that of a mandatory life sentence. Police officers, however, invoke the principles of impaired responsibility in relation to any crime. Insanity defences have largely given way in such cases to those based on diminished responsibility, thus anticipating and countering the negative effect produced by the special verdict. The orthodox verdict of manslaughter is followed by an individualised disposal, primarily and explicitly dependent upon the psychiatric needs, if any, of the convicted person and primarily and implicitly dependent upon the estimation of the degree of culpability and the deservedness of punishment.

Diminished responsibility requires not that the accused suffers from a disease of the mind but

from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his...doing or being a party to the killing (s2(1) Homicide Act 1957).

Further, and invariably supported by medical evidence, this abnormality of mind is held to be

a state of mind so different from that of ordinary human beings that a reasonable man could term it abnormal. (Lord Parker CJ in *R v Byrne* (1960) in Jefferson, 1992: 223).

This invitation to empathise requires a conception of states of mind which are beyond the normal and beyond the theoretical understanding that 'any ordinary person would act in that way under those circumstances'. And it is in the invitation to empathise that there lies a paradox, since it is apparently the possessors of states of mind that would presumably be unimaginable to the ordinary human being who are often excluded from the ambit of diminished responsibility. Among the would-be abnormal of mind who failed in their claim is included the divinely inspired killer of prostitute women, Peter Sutcliffe. So, for example, voices from God, sexual desires that can only be satisfied by strangling and mutilation and persistent and self-induced states of excessive drunkenness are conditions which 'everybody knows' to be abnormal, with which it is difficult if not impossible for 'normal' people to empathise and which should therefore qualify for excusal. Nevertheless, where the consequences of the lawbreaking are grave the lawbreaker is deemed to deserve if not punishment then incapacitation.

Moreover, in some circumstances, a verdict (or, in the case of the police, a name) which acknowledges that a punishable person is sick and therefore not wholly responsible, there is a

tendency to assume that legal names and definitions of crimes correspond to subdivisions in nature...[which] leads people to assume, for example, that the acts which the law labels as 'murder' are a...natural sub-species of 'crime' whose members have more in common with each other than any of them have with acts that are classified under other headings such as manslaughter (Walker, 1968: 134).

A police common sense of justice demands more than that blameworthy individuals be subjected to punishment but that they be named as members of the class to which they rightly belong. So, for example, a finding of 'guilty of manslaughter by reason of diminished responsibility' permits the same measure of punishment (i.e. the life sentence) to be meted out as a finding of 'guilty of murder'. However, the nature and circumstances of the crime may be such that 'manslaughter' fails to express the enormity of the crime and the culpability of the accused. Manslaughter, being a lesser offence than that of murder, includes those crimes with which commonsense finds some measure of empathy and justification, for

example, the battered wives who strike back at violent partners; the 'mercy' killings of incurably sick loved ones. Manslaughter is an inadequate expression of the revulsion that is felt for those who commit violent and terrible crimes. Excluded from the discourse of diminished responsibility, such defendants as these become subject to moral discourses on states of evil, and, in the absence of any juridical discourse which would express their 'beyond the medical' and 'beyond the ordinary' status, become subject to the 'normal' mens rea requirements of criminal law. Their activities may equally become the subject of rational explanation, for example, Sutcliffe's behaviour was presented by the prosecution as an 'understandable' response to the behaviour of a prostitute with whom he had had dealings, to that of his wife, to that of his mother and to the sexual provocation that had been offered by the prostitute victims (Bland in Lacey et al,1990:289).

Similarly, to name the relatively blameless as members of the most heinous classes of criminals creates a sense of unease which arises out of the disjunction between the type of behaviour and the legal label applied to it. The statutory substitution of 'infanticide' for 'murder' not only removed from the judiciary the distasteful burden of pronouncing the mandatory death penalty upon mothers but more importantly defined a mother's act of killing her child as having minimal impact in terms of blame while it substantially eroded any desire to impose a punitive sanction (Walker,1968:134). Infanticide, 'a new and technical term which lacked emotional association' became something other than murder (Walker,1968: 134) (see further below on infanticide) .

Consequently, the would-be impaired of mind who are most likely to succeed in partial exculpation are those whose states of mind and circumstances of criminal behaviour 'every one can understand', with whom the ordinary juror or the ordinary police officer can at least sympathise, if not empathise. In fact, those whom judicial discourse directs should be excluded from diminished responsibility by virtue of their very 'normality'. Other and appropriate discourses, primarily medical, must then be employed to transform this normality into the abnormal, into some form of madness in order to secure a mitigation of their responsibility and punishment. Wootton (in Walker,1968:157-8) cites the following examples of lawbreaking that is not beyond ordinary comprehension and which has been designated as indicative of impaired responsibility.

An 'abnormal' state of despair induced by the need to care for an imbecile child or by the diagnosis of cancer in a beloved relative, leading in each case to a 'mercy killing'; a 'reactive depressed state' associated with the breaking of an engagement or the discovery of unfaithfulness in a spouse....inability to hold down a job....all of these have been adduced as at least contributory evidence of diminished responsibility.

There is one class apparently perceived by criminal justice as presumptively excusable rather than punishable. The Infanticide Act 1938 is the legal embodiment of collected judicial and common knowledges about 'women's role as carers of babies' (Lacey et al,1990:291) and, more particularly, about the mental state of mothers who have recently given birth to and are caring for their babies. (Also embodied is the 'natural' and judicial revulsion at the prospect of pronouncing sentence of death upon a mentally disturbed woman, even though this sentence was invariably commuted (Walker,1968:128)). Therefore, where a woman wilfully causes the death of her child (of less than 12 months in age) when the balance of her mind is disturbed by the effects of childbirth, she will be punished as if she were guilty of manslaughter (Infanticide Act 1938, s1(1)). This presumption of 'partial insanity' is only rarely likely to be rebutted during the legal (and moral) trial since the Act sets the 'official stamp of approval' on the commonsense assumption that since

*most mothers who kill their babies soon after giving birth to them are in a highly disordered state of mind.....all mothers who kill their children are disordered (Walker,1968:136).*

Moreover, the customary juridical discourse about accused people who practice deceit in order to escape the consequences of their actions are largely erased by the legal construction of infanticide. Incompatible with the statutory wording of infanticide is the traditional judicial apprehension, inter alia, of unmarried women who kill their bastard children; of married women who kill children who may not have been fathered by their husbands; of women who conceal or deny the birth of a child (Hale in Walker,1968:127), in other words any type of behaviour that is perceived as blameworthy.

Therefore, and although expressed within the narrow formula of infanticide, the presumption of innocence extends to any woman who observes the proper rules of womanhood (and this will be discussed further below and in Chapter 4).

Finally, there are circumstances which do not amount to a legal defence but which are of particular importance since they allow that the degree of mental disorder may render trials temporarily or permanently out of the question. The legal criterion by which fitness is judged is whether accused persons are of sufficient intellect to comprehend the course of the proceedings. (The Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 enables a trial of fitness followed by a trial of the facts (where the accused is found by a jury to be unfit) to be undertaken, acknowledging the previous injustice of compulsorily detaining the

alleged offender, albeit one who might be sick and in need of treatment, where the issue of guilt or innocence was yet to be resolved).

The rationale of fitness to plead is motivated by justice and commonsense, policy and practicality. Antipathy towards the prospect of subjecting a sick person to the ordeal of criminal proceedings is not motivated merely by compassionate concern but also by the undesired prospect of criticism from others inside and outside the criminal justice system on the wisdom of pursuing formal action to little or no avail (see further on this in Chapter 3). However, unfitness to plead cannot provide an avenue of escape for the fraudulent, for those whom it is thought necessary to incapacitate and or to punish. So, for example, the police may always postpone the bringing of charges until a later date or may agree to withhold any charge in return for a period of hospitalisation or treatment.

These fraudulent and deceitful people who would try to take advantage of the benefits that the defences of mental disorder can bring have been described in the foregoing discussions in terms of the undeserving. Conversely, those who may properly avail themselves of the defences of disorder have been described in terms of the deserving. Attention must now turn to an investigation of the concept of (un)deservedness in order to identify what it is that renders lawbreakers as either one or the other.

### **III. DEFINING THE (UN)DESERVING**

This chapter has so far been concerned with the perceived danger that lawbreakers who behave in extra-ordinary ways may evade responsibility and punishment for their actions and so 'get away with it'. And the people who pose this danger are not the 'truly' mentally disordered but those whom moral censure renders as punishable and thereby undeserving. What follows is based on a simple premise and that is that 'people who pose a danger' are 'dangerous people'. Therefore, it becomes necessary to determine what it is about people that subjects them to moral censure, as deserving of punishment, as undeserving of mental disorder and so as dangerous.

Abnormal behaviours threaten not only the harms that have been discussed in this and the previous chapter (that it, to the authority or 'face' of police officers) but pose a 'real' danger those who engage in them (and risk self-harm), to police officers who have to deal with them and to the wider public. In particular, this is true of physically violent and aggressive conduct. Individuals may, however, be perceived to be dangerous not solely on the basis of their behaviour but on the basis of their membership of a particular group or



class of people that always and already constitute a somewhat amorphous and insidious threat to the social and moral order (for example, the 'idle poor'). There are, finally, those whose danger lies in their difference from the norm, the status quo, whether by virtue of some cultural or some biological attribute.

Before proceeding further an apparent lacuna in the discussion of the conditions of responsibility which relate to the offender must be addressed. There is substantial evidence that black people are disproportionately more likely to reach psychiatric services by way of the police, are more likely to be the subject of compulsory hospitalisation when involved in criminal proceedings (Cook and Hudson, 1993:65-70) and to be seen as more dangerous than their white counterparts (Fernando, 1989:43). However, neither 'black people' nor, consequently, their 'moral states' were represented in the empirical data and for the following reasons which are concerned with the demography of the locations in which the fieldwork took place (see also Appendix II: Methodology).

- i. A part of the fieldwork for this thesis was undertaken in police stations located in rural areas outlying a large urban conurbation in such areas representatives from *any* ethnic minority group among the resident population were negligible and therefore the policing of black people was not a feature of officer's everyday experience.
- ii. Fieldwork was further undertaken in police stations located in a large urban conurbation in which was resident a significant ethnic minority population. However, this population was overwhelmingly Asian rather than black and it is black people rather than Asian people who figure in the literature on the disproportionate psychiatrisation of ethnic minority groups again, the policing of 'black people' and, furthermore, 'mentally disordered black people' is outside the everyday experience of many officers.

Therefore, while this chapter takes into account the factors of class and gender which surfaced in the empirical data and which cut across the issue of race, any detailed discussions of race and 'mental disorder' are forgone.

### **(i) Dangerous Behaviours**

Juridical, medical and (organisational) commonsense talk of the irrationality, the incompetence and the absence of self-control associated with mental disorder inevitably forges links between particular types of criminal behaviour and mental disorder. These behaviours are held to be precipitated by or be a symptom of an already clinically described category of mental disorder. The trials of those who suffer from psychotic depression who,

under the delusion of a future without hope and the inevitability of catastrophe overtaking their

nearest and dearest as well as themselves,...desire to kill in order to spare their loved ones suffering (West(1965)in Prins,1986:93),

often following upon their attempted suicide.

Mental handicap or learning disability is held to manifest itself in impulsive and unpredictable outbursts of aggression and violence which may be symptomatic of the disorder or which may be a response to an inability to understand and be understood by 'normal' others (Prins,1980). Equally,

the attitudes to legitimate expressions of sexuality of some mentally subnormal people may be naive, primitive, or unrestrained (Prins,1980:92),

often amounting to the commission of some form of sexual offence. Furthermore, in addition to those of the mentally ill who set fires in response to 'great emotional upheaval' or 'as a result of their hallucinatory experiences' (Prins,1986:220),

a history of mental impairment (retardation, handicap, subnormality) seems to occur quite frequently in those persons who have committed arson on more than one occasion (Prins,1986:221).

It is clinically recognised that some cases of theft are set against a background of recurrent depressive illness, including those instances of women who steal, usually from shops, in a pre-menstrual or menopausal condition. The criminal behaviours that medicine attributes to forms of mental disorder may crystallize within everyday police knowledges (and legal knowledge, as exemplified by infanticide) into stereotypifications of 'offences of mental disorder', that is, behaviours which it is believed are typically associated with the mad, of which examples have been given above. A particular type of crime, a crime that is odd or weird or out of the ordinary, may trigger a suspicion that the suspect is abnormal. Police officers then may seek out other corroborative evidence of abnormality, for example, questioning the suspect in rather more than usual detail as to medical, social and educational history. Therefore, a 'married woman of 60, of impeccable previous character, who, for no apparent reason, stole a tin of soup from a supermarket' and who was consequently found to have been 'suffering from a neurotic depressive illness' (Prins,1980:69) is an archetype for all those other elderly, respectable women who may be found in police stations accused of shoplifting.

Categorisations of crimes as being typically committed by the mentally disordered may exclude some lawbreakers from the ambit of mental disorder on the basis of their normal criminal behaviour. Further, resistance may be engendered to psychiatric attempts to

convince legal and police commonsense of underlying but somewhat concealed mental ill-health. The requisite premeditation, planning and cunning that are coupled with some of the more common offences - burglary, robbery and other assorted thefts - do not accord with the ascribed impulsivity and irrationality of the sick and impaired.

(It is assumed that women homicide offenders are bad if there is evidence of premeditation or mad if there is no evidence of provocation (Edwards in Ussher,1991:173).

Doubts about the mental state of the accused may therefore be rationalised as 'normal criminality' and suggestions of sickness may be responded to with accusations of fraud and deceit. However, to draw a connection between crime and mental disorder in the context of crimes of the mad does not answer questions about '(un)deservedness'. It is necessary to introduce a further element and that is to inquire into the association between mental disorder, crime and danger.

Violence is almost universally regarded as the hall-mark of dangerousness. 'Dangerous' offenders are presumed to be violent and violent offenders are presumed to be dangerous (Floud and Young,1981:7).

Not every individual who engages in violent conduct will be deemed to be *dangerous*. All behaviour which contains components of violence and aggression creates a *risk* to the personal safety of police officers and to others. Some degree of risk is a necessary and accepted element of police work where courses of action must be taken in relation to violent and potentially violent people. The courses of action (or inaction) taken are those predicted to be the safest in all the circumstances. However, dangerousness does not equate with risk, rather 'dangers are unacceptable risks' (Floud and Young,1981:4) and the transformation of risk into danger is mediated through the question of 'what people are prepared to put up with and why' (Floud and Young,1981:4). Dangerousness is a matter of subjectivity; it

is not an objective quality, but an ascribed quality like trustworthiness. We feel justified in talking about a person as dangerous if he has indicated by word or deed that he is more likely than most people to do serious harm, or act in a way that is likely to result in serious harm (Walker in Prins,1986:84).

And in

bringing to the...fore not only the criminal as the author of the act, but also the dangerous individual as potential source of acts' [punishment or treatment is] applied and varied on the basis not only of what men [sic] do, but of also of what they are, or of what it is supposed that

they are (Foucault in Kritzman, 1988:150).

What police officers are prepared to put up with and why depends upon the degree of a person's culpability and so

risk originating in the intentionally harmful behaviour of a responsible agent is less acceptable than a risk of the same, or even of a larger order of magnitude, originating in behaviour that is not intended to be harmful (Floud and Young, 1981:7).

The degree of culpability is predicated upon the extent of the apprehension that is caused by the behaviour since 'fear converts risk into danger and it tends to be inversely proportional to time and distance' (Floud and Young, 1981:6). Police work necessitates an involvement with disturbed, deranged and violent people. So, for example, the intentionality and responsibility upon which danger is built may be tempered or exacerbated by previous knowledge of a suspect's previous criminal or medical history. The violent or aggressive behaviour of a 'stranger' unknown to the police and inexplicable on this one apparently isolated occasion may be considered 'unacceptable' whereas similar behaviour on the part of a known individual may be excused, deemed to be and described as superficially aggressive or threatening but essentially harmless.

Conversely, knowledge that the person is mentally disordered may be called upon as being convincing evidence that a person is dangerous or that the mental disorder itself equates with danger (Menzies, 1989). Notwithstanding that there may be some sympathy for the person diagnosed as sick and not truly responsible, the very nature of the behaviour coupled with the irrationality and unreason of disorder gives rise to concern that the behaviour cannot but be repeated to the detriment of the individual or to the public.

*To be dangerous is not an offence. To be dangerous is not an illness. It is not a symptom. And yet we have come...to use the notion of danger, by a perpetual movement backwards and forwards between the penal and the medical (Foucault in Kritzman, 1988:191).*

Importantly, where individuals are perceived to be dangerous, whether their disposal takes a penal or a medical form may be irrelevant to the police (and to the courts). What is relevant is whether a penal or a medical disposal is the most effective means to an end. Where the purpose of the disposal is to control, to confine, to regulate, these are functions which can equally be achieved in either a punitive or a therapeutic sphere ((Foucault (1988:180) suggesting that 'from the outset, psychiatry has had as its project to be a function of social order'). The taken for granted bonds between 'violence' and 'mental disorder' and 'danger' (in

that everybody knows that violent people are often mad; that mad people are often violent; that mad people are often dangerous) are drawn upon and each separately becomes a signifier of the other, interchangeable concepts employed purposively to bring about certain consequences.

The concept of (un)deservedness must now be reconsidered. It emerged in the course of describing the operation of the defences of mental disorder that the naming of lawbreakers as mad may not only confer a 'symbolic' state of 'innocence' but anticipates particular consequences which range from absolute acquittal, through minimally coercive treatment through to indeterminate and compulsory detention. While at the 'acquittal' and 'minimal coercion' end of the spectrum these consequences may well prove advantageous to lawbreakers, at the other, treatment and punishment are not inevitably so very different in their effects. Mad people, as explained in the context of insanity, do not go free but are incapacitated or punished by the effects of mental disorder. And it is their perceived dangerousness that is responsible for bringing about those effects. Dangerousness is therefore utilised to incapacitate or punish through treatment those lawbreakers to whom criminal justice would appear to offer an excusal or mitigation of punishment. So, for example, an accused who suffered from psychomotor epilepsy gave evidence that his strangling of a young woman was carried out in a state of unconsciousness and was therefore involuntary (*Bratty v AG for Northern Ireland* (1963) in Smith and Hogan, 1993:12). Such facts risked falling within the terms of automatism and consequently an acquittal;

such an act is no doubt involuntary, but it does not give rise to an unqualified acquittal, for that would mean he would be let at large to do it again...It seems to me that any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind (*Denning in Bratty v A.G. for Northern Ireland* (1963) in Smith and Hogan, 1993:13).

Thus the way is paved for a verdict of insanity and its attendant indeterminate hospitalisation.

Significantly, incapacitation and punishment becomes justified not merely where dangerousness has been 'proven' by instances of actual or threatened violence, harm or aggression on the part of the lawbreaker. Behaviours of a high nuisance value to police officers, 'failure to convey the proper degree of remorse or respect' (Menzies, 1989), particularly where these are repeated and persistent, may attract moral censure. Punishable nuisances that officers experience as an insoluble problem may well be defined as

disordered in an attempt to make them someone else's problem, as a 'psychological' or 'mental health' problem which locates them in someone else's professional sphere. According to Menzies (1989:73), police officers see danger and disorder in those people who usurp limited police and other official resources, their irrational and irresponsible behaviour (for example, fire setting, threats of suicide and self-harm) necessitating a disproportionate consumption of police and emergency service time and manpower. Risk is converted into danger where emphasis is laid on fears for future 'irrational and irresponsible' conduct and danger is not inevitably confined to considerations of the physical safety of the person, of property and of the public. The concept of danger is utilised to initiate penal or medical action to deal with those problem people (and a problem on police commonsense grounds) who, unless they can be made to appear as an unacceptable and intolerable risk (and a risk on forensic grounds) to others, as a danger which needs to be minimised, will continue to act as a source of inconvenience, trouble and menace to the 'authorities' and to the community. Thus, utilising the concept of danger to examine the concept of deservedness now reveals the latter as accommodating a diversity of lawbreakers, both punishable and excusable. When criminal justice talks about mentally disordered offenders it talks about anomalies; about people who are exceptions to the rules about responsibility, guilt and punishment. Presenting the effects of mental disorder as an advantage to the lawbreaker and one that should only be offered to those who are worthy of it serves to conceal the advantages that mental disorder can offer to the police and others of the criminal justice system. These people have an interest in defining some lawbreakers as disordered, to get rid of them, to incapacitate them, to punish them. And the distinction between deservedness and undeservedness of mental disorder is a functional one. Unlike the punishable but deserving classes, those who do not deserve to be mentally disordered are those to whom criminal justice can offer punishment enough for their lawbreaking and, as far as the officers are concerned, to whom mental disorder would offer the opportunity of getting away with it. Therefore, the concept of deservedness reconciles the paradox of mental disorder being at one and the same time a benefit and a detriment.

The concept of intolerability, of what is and is not acceptable, is vital to the understanding of a further level at which danger is operative, that danger being one which is more diffuse and invidious and which threatens to undermine or destroy social stability and order. Moreover, as the lay conception of behaviour which is and is not to be borne fixes the boundary between the sane and the insane (Scull, 1993:351), so it fixes the boundary between risk and danger and

the whole notion of intolerable behaviour....is clearly a culturally and situationally variable one (Scull,1993: 352).

It is to these 'variables' that the discussion now turns.

## **(ii) Dangerous Classes**

There are classes of people who traditionally and always pose an (acknowledged and acceptable) risk to the social order; people whose behaviour may readily become intolerable and whose consequent and necessary regulation is rooted in and mediated through the 'danger' that they present. Medicine may often regulate and control where the criminal law cannot (i.e. where no criminal offence has been committed but persons are perceived to present a danger to themselves or others). Its qualifications to do so are founded on a tradition of

'therapeutic isolation' .... without any doubt a measure as imperative, rigorous and sure as the harshest police custodial action (Castel,1976:167),

such isolation being invoked against those of the risk posing classes who carried danger on their bodies and in their minds. For example, the Contagious Diseases Acts of 1864 and 1866 enabled prostitutes infected with venereal disease to be compulsorily detained in hospital (Treves Brown in Hinton, 1983:39). Further, Scull (1993:352) states of the asylum that it soon became

apparent that its primary value to the community was a handy place to which to consign the disturbing, the vaguely menacing, the unwanted, and the useless - those potentially and actually troublesome people who posed threats to the social order and to the business of daily living which were not readily subject to control by the legal system.

People who threaten social stability may do so by virtue of their membership of some social class and one known for its absence of moral respectability (Douglas,1970). It is moral respectability that holds the key to understanding the distinctions between those who comprise the 'deserving' classes, that is, those who deserve to be punished or to be excused by way of mental disorder.

Moral respectability lies in observing moral rules (and, as stated earlier, these moral rules will be judged according to the moral code of those who operate them, in this case, police officers). The antithesis of the respectable comprise the class of the morally disreputable. Its members pose a threat by virtue, inter alia, of their residence in the more

impoverished and crime ridden locations; through their 'social uselessness' (Foucault,1993 (originally 1961):58); or through their subversion of 'the importance given to the obligation to work, and all the ethical values that are linked to labour' (Foucault,1993 (originally 1961):64). However, it is the disreputable who almost inevitably find themselves in a double bind. The conditions of living that are perceived to *pose* a risk to other and diverse 'higher classes' are those very conditions which place those who experience them *at* risk. Risk and danger increase in inverse proportion to social class. The

wealth accumulates at the top, risks at the bottom... Poverty attracts an unfortunate abundance of risks. By contrast, the wealthy (in income, power or education) can purchase safety and freedom from risk (Beck,1992:35).

A significant constituent of this wealth is the protective cloak of moral respectability that attaches to the middle classes (Douglas,1970) but which is wanting in relation to those who do not possess the appropriate credentials (particularly in relation to family, employment and community careers) which suffice to rebut the presumption of deviance, criminality and immorality. In other words, the abstract meanings that attach to the categorical status of the 'poor' and the 'lower orders' (Douglas,1970:6-7).

'Wealth' empowers the 'higher classes' to protect themselves from those conditions of living which give rise to or exacerbate mental ill health. It enables them to resist the intervention of and exercise of compulsory powers by police and welfare agencies and to enter into treatment through 'choice' and not through 'coercion'. Social and economic conditions operate in the opposite direction in the lower orders (Scull,1993:361), where people are more likely to be subjected to such 'uncontrollable and threatening life events' (Ussher,1991:256) as crime, violence and the stresses attendant upon economic uncertainty.

There is evidence to suggest (Hollingshead and Redlich, 1958) that this risk differential, this imbalance in cause and consequence of mental disorder is manifested in the ways in which the police deal with those they deem to be mentally disordered. The lower the class, the heavier the concentration of the use of the police power of arrest and detention for disturbed people. The lower the class, the heavier the concentration of psychiatric referrals made by the police for individuals subsequently and medically diagnosed as neurotic and, more particularly, psychotic, the symptoms of the latter condition being more overtly violent and aggressive than those associated with the neuroses. Where 'wealth' fails to protect against mental ill-health, and where the boundary of intolerability is crossed, those factors which constitute wealth continue to carry some protective potency and operate to facilitate a



compassionate rather than a coercive entry into therapeutic control. As Hollingshead and Redlich (1958:192) point out, the higher the class, the more there is

a definite tendency to induce disturbed persons... to see a psychiatrist in more gentle and 'insightful' ways than is the practice (in the lower classes) where direct, authoritative, compulsory, and, at times, coercively brutal methods are used,

their circumstances of living having failed to rebut the presumption of their innate moral disreputability. Thus, the dangerous classes who deserve to be disordered are simultaneously classes in danger of suffering the worst effects of mental disorder. The respectable, on the other hand, are those to whom the advantages of impaired responsibility (see above) most often accrue. The relationship between respectability and danger is equally well illustrated through a consideration of the ways in which criminal justice conceives of mentally disordered female offenders.

The discourses of law, psychiatry and commonsense have long associated women with madness, primarily linking psychological instability to the vagaries and demands of the reproductive process. 'Woman' and 'madness' can come to signify each other, the discursive practices which create the concept of madness [marking] it as fearful, as individual, as invariably feminine (Ussher,1991:12).

While 'the discourse of madness regulates all women' it is

particular groups of women [who] are more at risk of coming under the psychiatric microscope: those who are married, those with children, those who are unemployed and poor (Ussher,1991: 166).

These are the conditions and circumstances of life that place women in positions of powerlessness and poverty sufficient to promote or exacerbate problems associated with mental health. Moreover, there are those women whose class further multiplies the risk of a diagnosis of mental disorder and its attendant consequences (see above).

Madness lies within the 'prescribed roles and routes' of women (Ussher,1991:6) and a sense of danger surrounds those who 'move outside.....designated paths' (Ussher,1991:6). Women who break the criminal law pose particular risks. As Heidensohn (1985:46-47) explains,

women offenders are such relatively rare phenomena not just in terms of their recorded crime rates, which are low and relate to trivial offences, but especially because of their rarity in court....[w]omen defendants therefore seem stranger and thus less comprehensible than men: they offend both against society's behavioural rules about property, drinking, or violence and also against the more fundamental norms which govern sex-role behaviour.

Diagnosing a female offender as mentally disordered (and such women are disproportionately more likely to receive a psychiatric disposal than are men (Allen:1987)) not only re-states her essential madness but also provides the therapeutic and interventionist means of remedying her extra-ordinary and extra-womanly condition.

Mental disorder may be utilised not only as a means of regulation but also of explanation, rationalising the relatively rare appearance in the police station of women who have subverted expectations of the way in which women should behave and, in effect, neutralising the potential danger surrounding this behaviour. According to Kennedy (1992:23),

our desire to seek psychiatric explanations for women's crime is a way of trying to make it invisible, a profound expression of our worst fears about the social fabric falling apart.

Where mental disorder is diagnosed, the lawbreaking assumes centre stage in order that the regulatory consequences attendant upon that diagnosis may be invoked and subsequently and swiftly this 'badness' is relegated to a position of peripheral importance. Similarly inexplicable badness is disappeared when it is rationalised as illness. Further,

[a]s a diagnosis of madness denotes an absence of reason, this implies that women who commit crimes, who are violent, are not in control of their senses,

all of these processes stripping

the woman of the power to be actively 'bad'. It pathologizes rather than criminalizes and women do not necessarily welcome this (Ussher,1991:172).

Nevertheless, pathologising their crime is welcome to some women since it acts as a protective device which, in attributing blame to biology (for example, PMS), shields those who are respectable and therefore excusable from the rigours of the procedures and penalties of the further criminal justice system. This is particularly effective where a diagnosis diverts women from the police station or from punishment and into the less coercive and restrictive facilities (for example, outpatient treatment) which cater to those of the mentally disordered who have offended but who are believed to pose little real danger to themselves or to the wider public.

However, the presumption of mental disorder which operates in relation to the

criminal behaviour of women is rebuttable.

In circumstances which defy this simple psychiatric labelling and where the offence is heinous, there is a very different response. Women not only become 'unsexed'....but take on monstrous proportions in the collective mind (Kennedy,1992:24).

Police officers also 'know' that some women who are faced with the prospect of charge and conviction will not hesitate to exploit any qualities and attributes of gender in order to help them get away with it. It is common police knowledge that an exculpatory construction may be placed upon certain factors (for example, the hormonal imbalances associated with the female reproductive cycle) by others of the criminal justice system (for example, defence lawyers and magistrates) which may secure a non-punitive disposal for the suspect.

It is necessary at this point to return to an issue discussed earlier in this chapter which concerns the way in which officers predict the outcome for lawbreakers at further stages of the criminal justice process. Police officers and other agents are not inevitably in agreement as to the state of mental health and appropriate disposal of people who pass through their hands. Once officers have determined that extra-ordinarily behaved lawbreakers are punishable or excusable they then have to convince others of the same in order that justice can be done. Attempts are made to achieve this by predicting the definition that others will give to the behaviour and assessing the possible outcomes in terms of disposal. This future is then pre-empted by presenting the lawbreaker in the most punishable or excusable way possible. The police portrait must anticipate the other and multiple stories which will be told about accused people by prosecution or defence lawyers, by psychiatrists and so on. It must emphasise and downplay, even lose and find particular elements relating to the victim, the crime and the offender (inter alia, past instances of bizarre behaviour; provocation by victims) in order that those others see accused people as they 'really' are and deal with them accordingly. And all of this must be achieved and justified within the rules which regulate the policing of suspects (see further in Chapter 3). Where officers perceive lawbreakers to be deserving of mental disorder one means is to construct the victim as punishable.

Lawbreakers who behave in extra-ordinary ways and who are perceived to be excusable place the victim in a somewhat problematic conceptual position. In the usual course of events, where punishability is dependent upon proof of the commission of a moral harm (Finkel,1988:140) it is the subject of that harm who attracts sympathy. But where the perpetrator of the offence also attracts sympathy (and some degree of formal excusal, for example, insanity or diminished responsibility), then the usual relationship of opposites is

disrupted. The response is to erase the 'real' victim or to treat them as if they were the guilty party.

So, for example, presumptive excusal is offered to any accused person who fills the statutory description of the perpetrator of the crime described in the Infanticide Act 1938 (s1(1)). The irrationality of madness sensibly explains the inexplicable act of a mother and the law knows that 'women in that condition' (i.e. having given birth within the last 12 months)

do get the strongest symptoms of what amounts almost to temporary madness, and....often hardly know what they are about, and will do things that they have no settled or deliberate intention whatever of doing (Stephen LJ in Walker, 1968:128).

The 'badness' of the killing almost wholly disappears, as does the victim, where judicial opinion holds that

you cannot estimate the loss to the child itself, you know nothing about it at all (Stephen LJ in Walker, 1968:128).

The minimal harm to the child 'incapable of the suffering which might be undergone by the adult victim of a murder' (Smith and Hogan, 1993:338) is mirrored by the minimal harm caused to society to whom the killing

causes no alarm, because it is a crime which can be committed only by mothers upon their newly born children (Stephen LJ in Walker, 1968:128).

Mental disorder may be utilised as one means of excusing or limiting the penalty for behaviour that, while legally blameworthy, is nevertheless commonly and/or judicially acknowledged to be 'sensible', 'understandable', 'inevitable' and so on. Erasing the responsibility of the deserving in such circumstances may be dependent not upon erasure of the victims but rather dependent upon bringing those victims to centre stage in order that their degree of worthiness or deservedness as the subject of the others' behaviour be evidenced. The worthy and deserving victims of formal and informal trials are frequently female and typically include those who take risks, who know the rules but break them - women who hitch-hike and get sexually assaulted; women who resist rape and by so doing further provoke the rapist and women who panic and force burglars to hit them (Cameron and Frazer, 1987:32). Moreover,

some women may contribute to their own deaths by running the risks of prostitution, of which violent death is an occupational hazard (Morris and Blom-Cooper in Cameron & Frazer, 1987:31).

Those who argued for Peter Sutcliffe's madness denied his responsibility on the basis that he was a paranoid schizophrenic who believed himself to be acting under a divine (mad) mission to kill prostitutes. This mission was nevertheless understandable (Bland in Radford and Russell, 1992:245) and the killings, by implication, would never have occurred had such violence not been precipitated by the behaviour of women. Those who argued for Sutcliffe's badness, that he was a monster, a clever calculating liar attempting to feign insanity, equally presented the prostitute as the deserving victim, thereby establishing an

understandable motive and motivation...to demonstrate *rational* intention to kill, and thus the existence of *mens rea* (Bland in Radford and Russell, 1992:244).

Indeed, victims can precipitate not only the behaviour but bear the responsibility for causing the mental disorder itself. A defendant who was depressed at the refusal of a former girlfriend to continue with the relationship and subsequently beat her to death was guilty of manslaughter by virtue of his diminished responsibility. His actions, according to judicial dicta, were not the consequence of wickedness but exemplified no more than what can happen

when out-of-their-depth and totally-unable-to-cope people do things which are foreign to their nature (Radford and Russell, 1992:232).

Therefore, people who are considered to be excusable are presented in terms which are more commonly reserved for the victims of criminal behaviour. Thus, lawbreakers who are excusable effectively become the vulnerable and the victimised themselves (and this will be taken up in Chapter 4).

## CONCLUSION

This chapter has examined in some detail the concept of 'getting away with it'. It was explained in the introduction to the chapter that a certain apprehension, experienced by police officers, permeates criminal justice discourses about 'mentally disordered offenders'. The fear is that unless people are 'really' and 'genuinely' mentally disordered they are getting away with their criminal behaviour. The danger that is threatened by lawbreakers who

behave in extra-ordinary ways originates in the fact that a finding that they are mentally disordered subverts the usual logic of criminal justice which holds that people are responsible for their actions and, if those actions are in breach of the criminal law, deserve to be punished for them. Proof of mental disorder provides an exception to this rule.

It has emerged throughout earlier discussions (above) that, as its proof effectively acts to deny legal responsibility and to mitigate punishment, mental disorder is explicitly and implicitly presented within criminal justice as being of benefit to lawbreakers, as a means of securing an advantage. It has been further demonstrated that it follows from this position that if mental disorder confers a benefit then only those who deserve to benefit should do so. This chapter, therefore, has set out to explore the concept of 'deservedness' in order to understand its relationship with and effect upon the process of naming extra-ordinarily behaved lawbreakers as mentally disordered.

At first sight it would appear from criminal justice talk that deservedness is a matter of great simplicity. The lawbreakers who do not deserve to benefit from being defined as mentally disordered are those who deserve punishment. The lawbreakers who deserve punishment are those who are deemed to be punishable. Punishability is not determined on the basis of a legal trial but rather is the outcome of the moral one that precedes it. In fact, and since there can be no other, the same kind of moral trial that is invariably undertaken by the police in relation to all of the lawbreakers that they encounter. Furthermore, it is people who are punishable who are accredited as those having a hidden motive, that motive being to avoid the consequences of their lawbreaking, to get away with their crime. So it is the punishable who are treated with mistrust since they are the people who are liable to act as if they were mad in order to secure their advantage.

However, upon the more detailed examination to which it has been subjected in the course of this chapter, it is apparent that the concept of deservedness as promoted in criminal justice is one that is built upon faulty rationales. In order that being defined as mentally disordered should provide any lawbreakers with any kind of benefit would require that the consequences of being defined as mentally disordered be somehow better or more advantageous than those which would follow their being found to be a normal criminal. In other words, that acquittal and/or treatment should be 'better' than conviction and punishment. Common juridical and police sense dictates that treatment covers a broad spectrum, from the minimally coercive out-patient orders to the highly restrictive and indeterminate hospital orders. Judicial acknowledgement that treatment is not to the lawbreakers' advantage emerged from the consideration given to the operation of the

defence of insanity, in that a potential finding of mental disorder is utilised as threat to deter punishable people from trying to get away with it by way of pleading the defence. Moreover, the restricted circumstances under which the defence may be successfully pleaded ensures that the legally insane are dangerous enough to warrant incapacitation despite the fact that they are not legally responsible for their behaviour. Acquittals which permit mentally disordered offenders to walk free from courtrooms are a rarity.

That mental disorder can act to incapacitate or to punish invites a re-consideration of the notion of benefit and the concept of deservedness. Mental disorder can no longer be simply understood as providing some advantage to the deserving classes (as explained in relation to diminished responsibility). Benefit also accrues to those of the criminal justice system, including police officers, who define lawbreakers as mentally disordered since it provides a means of confining dangerous and punishable people who may otherwise go unconfined or unpunished.

From this chapter it has now become clear that mental disorder and the terminology which police officers use to describe states of impaired mental health is not just a name which is used to make sense of what would otherwise be non-sense. Mental disorder as it is spoken of and understood by police officers and others within the criminal justice system has specific meanings and it is these meanings which are critical to this thesis and the analysis of the empirical data. The first of the ways in which mental disorder is understood and applied derives from its symbolic meaning. The successful pleading of defences which result in a verdict that lawbreakers are insane or suffering from diminished responsibility proclaim them as innocent of responsibility for their state of mind and for their resultant actions. Secondly, mental disorder is understood in terms of its effects or consequences in that its diagnosis almost invariably brings about some form of treatment for lawbreakers. Thus, mental disorder is functional and people are so named in order that police officers may bring about particular and desired consequences.

Furthermore, the conceptualisation of mental disorder as symbolic and functional, as a name that is employed purposively, reconciles the paradox which emerges when criminal justice appears to conflate mental disorder as both beneficial and detrimental and its sufferers as both deserving and undeserving. In other words, perceiving it to be a good thing and a bad thing at one and the same time. Contrary to what would initially appear to be the case, deservedness is not confined to lawbreakers who are deserving of the beneficial effects of mental disorder which results in their stigmatisation as sick rather than criminal and in the mitigation of their punishment to a more favourable and less coercive form of treatment.

Deservedness also embraces lawbreakers who are deserving of the adverse effects of mental disorder which leads to their undergoing restrictive confinement in conditions which render their treatment as not so very different than punishment.

The latter part of this chapter described the basis of the distinction between lawbreakers who deserve to suffer the worst and best effects of mental disorder, positing that it rests upon their dangerousness. Consequently, and because of the threat of harm that they present to themselves and to others, it is in the best interests of present and future policing that the extremely violent and the bizarrely behaved are incapacitated in hospitals, and this is regardless of their perceived innocence. Equally dangerous are the disreputable whose failure to observe moral codes and norms which are espoused by police officers renders them punishable and so deserving of the more punitive of treatment provisions. On the other hand, police officers utilise mental disorder to ameliorate the effects of criminalisation upon people whose observance of the rules confirms their membership of the safe and respectable classes.

Police officers, therefore, invest a great deal in their naming of lawbreakers as mentally disordered. On each occasion that a lawbreaker is processed through to the further reaches of the system, justice is put in jeopardy. As indicated throughout this chapter, it is because the police have no authority to determine the final outcome for lawbreakers who deserve to be mentally disordered that they attempt to influence others who do possess that authority to define them as such and yet remain within the rules that regulate police actions. It is at the point that has now been reached in considering the issues fundamental to the rest of this thesis that this chapter has raised, investigated and resolved that it becomes necessary to address those issues that it has raised and that remain as yet unexplained.

The apparent objectivity of the rules of law so far discussed and which govern the legal defences to criminal responsibility has been shown to conceal a subjectivity in the definitional process based upon certain attributes (for example, relating to class or gender) of lawbreakers which class them as safe and excusable or dangerous and punishable people. However, and as explained in Chapter 1, police attributions of mental disorder emerge from the 'contextual relativities' of their encounters with extra-ordinarily behaved lawbreakers. Consequently, the attributes of the named cannot be taken in isolation from the attributes of those who are doing the naming. Police officers who define mental disorder are doing so while acting in a particular capacity and their actions are regulated by a particular set of formal and informal rules. While this chapter has gone some way to describing their (professional and bureaucratic) organisational approach, that is, police officers'



understanding of mental disorder that originates in their capacity as agents of the criminal justice system within which they operate, it has not gone far enough. A more individualised and specific organisational approach, that is, one which relates more directly to police officers doing their job remains to be disclosed. Further, the rules (noted above) which authorise their actions, by which those actions must be justified and which limit their sphere of influence over the outcome for the deserving have been tangential to the discussions in this chapter. Finally, and crucially, it has yet to be explicitly acknowledged and explained that the effects of mental disorder which take the form of the treatments referred to so far are entirely dependent upon a medical diagnosis of a psychiatric condition. Neither police officers nor any other members of the criminal justice system are empowered to obtain treatment disposals in the absence of their authorisation by a doctor. Therefore, the relationship between police officers who act as gatekeepers to the criminal justice system and doctors who act as gatekeepers to treatment, along with all of the issues noted above, remain to be addressed in the following chapter.

## **CHAPTER THREE**

### **The Policing Of Mental Disorder: Procedures, Policies and Practices**

#### **INTRODUCTION**

This chapter begins by turning back to the concluding part of Chapter 1 in order to conduct a review and a reconsideration of the concept proposed there, that of 'getting it wrong'.

The contention posited in Chapter 1 was that behaviour is not mentally disordered in itself, that there is no one type of behaviour that is essentially 'mentally disordered'. Rather it is the case that behaviours which are extra-ordinary (given all of the contextual relativities of police encounters with lawbreakers that were explained in Chapter 1) come to be named by officers as mentally disordered. Mental disorder, then, is a product of those encounters and the description of people as mentally disordered affords an explanation for what would be otherwise inexplicable. The chapter developed the notion that such 'extra-ordinariness' generates uncertainty for those police officers who are witness to it and in so doing creates and threatens them with potential dangers. Police officers rely upon their typologies of the norm in day to day encounters with lawbreakers. Categorisation of lawbreakers as typical of one or another kind of 'normal criminal' enables officers to predict the present and future behaviour of those lawbreakers. These predictions are based on their past experience with others of that type. Disrupting the smooth-running of the face-to-face encounter, lawbreakers who do not behave in the ways expected of normal criminals are somewhat resistant to swift rule of thumb categorisation. This, in turn, renders officers less certain in their predictions about what can and will happen next and so increases the risk that officers will 'get it wrong', resulting in their loss of face. Loss of face may be experienced by officers as no more than the embarrassment that results from their misunderstandings and misinterpretations of out of the ordinary behaviour. This may, for example, lead to officers making inappropriate and inadequate responses to lawbreakers, to being taken by surprise by the unexpected and unusual behaviour. Should officers perceive themselves as unable to manage a situation effectively and competently, it may well lead to their losing authority before others who are present, in particular, members of the public. Moreover, people who suffer from disturbed states of mental health are capable of causing harm to themselves and to others. Police authority is more seriously undermined should any such incident occur as a result of officers' failure to deal with a situation appropriately.

Chapter 2 went on to deal with the undesirable consequence of 'getting it wrong',

much anticipated within the criminal justice system, which is that to be treated as mentally disordered allows those lawbreakers who deserve to be punished to get away with their crime. Or, getting it wrong means that punishable people are in danger of receiving the benefits that mental disorder has to offer. Upon examination, 'getting away with it' emerged as a rather more complex concept than is suggested by criminal justice talk. In fact, mental disorder was revealed in Chapter 2 to operate on two levels. As signifying an absence of responsibility for one's actions, mental disorder is symbolic of 'innocence'. As capable of bringing about effects which are both beneficial and detrimental in terms of the measure of coercion and control inflicted upon the mentally disordered offender, mental disorder is functional. Mental disorder and the treatment that follows upon its diagnosis, therefore, offers more than benefits to those who deserve to be excused from blame. It further offers a just outcome to those lawbreakers who deserve to be incapacitated by or to suffer the pains of treatment.

Having reviewed the concept of 'getting it wrong' and its consequences, it has now become necessary to establish the relationship which exists between those consequences, namely 'loss of face' and 'getting away with it'. In order to do so, 'loss of face' must be freed from the immediacy of the face-to-face encounter. This is achieved through drawing upon the simple premise, fundamental to criminal justice, and that is that justice must not only be done but must be seen to be done. If the excusable (and thereby 'innocent' lawbreakers discussed in Chapter 2) are punished and the punishable (and thereby 'guilty' lawbreakers discussed in Chapter 2) are not, then justice suffers what amounts to a loss of face. The justice system and the reputations of those who are responsible for its administration are undermined. On the other hand, justice as it is determined in the course of the **moral** trial cannot be **legally** secured at any price. There is always the danger that face will be lost if it is discovered that justice is secured by unjust means. Police officers are subject to these considerations in their dealings with extra-ordinarily behaved lawbreakers. The consequences, should officers 'get it wrong', are not only that lawbreakers will (or will not) 'get away with it' but that officers, among criminal justice others, will lose face.

It now becomes more sensible, in light of the discussions in this chapter and the analytical implications of the concept of 'loss of face' as it will be used in Part II of this thesis, to re-conceptualise 'loss of face' as 'getting into trouble'. 'Getting into trouble' is best understood as a generic term which describes the adverse consequences for officers that follow from 'getting it wrong'; from those mistakes made in face-to-face encounters with unusual kinds of lawbreakers which have repercussions in future times and places and which

will rebound upon those officers responsible for getting it wrong (see further below). Police officers are subject to the rules of law which regulate, proscribe and prescribe their conduct in relation to those who break legal rules and/or behave in abnormal ways. As was explained in the previous chapter, in the event of such an occurrence, it is the job of officers to do something, to take some or other course of action. What they do must be done according to a rule. In other words, it must be legal. Therefore, if the action that officers take is intended to ensure that lawbreakers get what they deserve and, at the same time, prevent them from 'getting away with it', that action must be capable of being justified (to themselves, to superior officers, to others of the criminal justice system, to the courts) as having being taken in accordance with a known rule. That is, a rule that is understood by those to whom it is offered in justification. The exercise of extra-legal justice must necessarily be capable of being presented as legally justified. And the reason that it must be justified is that if it is not then officers will get into trouble. Thus, officers get into trouble not because they have broken or bent a rule but because they have failed to successfully justify their actions in accordance with a known rule.

Furthermore, the concept of trouble as it is to be utilised here is not constituted merely as the embarrassment or physical harm which has been explained above. When police officers are called upon to do something about lawbreakers who behave in extraordinary ways, they act as representatives not only of their own organisation but of the further criminal justice system and in so doing put all of these reputations at stake. If officers should get it wrong, resulting in some form of consequential damage to these reputations, then trouble (for example, by way of disciplinary measures or the blocking of promotion prospects) rebounds, as stated above, upon the officers responsible.

Thus, officers name lawbreakers who behave in extra-ordinary ways as mentally disordered upon the basis of their deservedness of the effects of mental disorder and this name is a product of the face-to-face encounter between the parties. The 'something' that officers do, the action (or inaction) that they take is a product of balancing the attainment of just deserts by way of the effects of mental disorder with the avoidance of getting into trouble. And the balance which is struck between the two is contingent upon officers' assessment of risk. All dealings with people who behave in unexpected ways are, by their very nature, beset by risk. But police officers are not prepared to jeopardise their working relationships with colleagues or their careers in order to attempt to get justice done. There will always be one risk that officers are not prepared to take, some trouble that they do not want to get into in order to ensure that these lawbreakers get their just deserts. This one risk

that they will seek to avoid is the one which is intolerable, and (as discussed in Chapter 2) intolerability renders a risk as a danger. Such a risk, therefore, swings the pendulum of legally authorised action (or inaction) between doing something one way or doing it another, for example, detaining the extra-ordinarily behaved lawbreaker under arrest or under the mental health legislation (this will be explained further below and risk assessment will be seen to be central to the analysis in Chapter 5).

This examination of risk assessment allows the re-introduction of the hitherto noted notion of undeservedness. It emerged in Chapter 2 (and was also noted above) that 'getting away with it' is not as simple a matter as criminal justice talk would suggest. It is rather the case that mental disorder in terms of its effects can be turned to the advantage of the police (and those others who administer criminal justice) in that it offers the possibility of incapacitating and punishing as well as treating some lawbreakers for whom punishment is inappropriate or inadequate. Similarly there are lawbreakers to whom mental disorder has nothing detrimental to offer. Indeed, what it does offer is, at the least, the benefit of innocent status, and more than this, the benefit of treatment that is insufficiently punitive in the light of the perceived punishability of the lawbreaker. While, on the one hand, officers cannot risk getting into trouble in the actions that they take to ensure that the deserving receive the effects of mental disorder so, on the other, officers cannot take the risk of ignoring any extra-ordinary behaviour which may give rise to doubts as to the mental state of lawbreakers. Officers therefore have to treat such lawbreakers as if they were mentally disordered and afford them all of the safeguards that the law has to offer to what it regards as vulnerable or at risk people (see further in this chapter and Chapter 5).

Chapter 2 made it evident that officers can determine whether people are punishable or excusable but they cannot determine whether they are excused or punished at the culmination of the criminal justice process. Once officers do something they embark on a course of action which then sets in motion a whole series of consequential actions. If action is taken under mental health legislation a doctor must be called. If there is an arrest then not only must the doctor be called but lawbreakers must be afforded the presence of an 'appropriate adult', be notified of their entitlement to a legal adviser and, at the discretion of the police, their case be made the subject of consultation with the prosecutors about its disposal. Each of these people has a formally designated role to play in relation to abnormal lawbreakers (which will be discussed later and in Chapter 5). Each, therefore, threatens officers with the possibility that the way in which they play their part may throw a spanner in the works of officers' legal accomplishment of moral justice. As will become apparent

below, these people cannot easily be excluded from the police station and so other means are found to ensure that they perceive justice to lie along the same path as the police do.

These legally authorised actions or inactions are more than just ways of doing something with extra-ordinarily behaved lawbreakers. They are legal means by which moral justice is obtained and by which it is expressed. Yet legal rules, as will become apparent in this chapter, are too widely drawn and too restrictive in their operation to reveal the fine distinctions that officers need to make between the punishable and the excusable, the deserving and the undeserving that have been outlined so far. Defining lawbreakers as mentally disordered and thereby invoking the legal and medical consequences that flow from such a definition (see below) does not mean that they deserve to benefit from the definition. Arresting lawbreakers does not mean that police officers believe that they are deserving of punishment. Justice is not achieved through legal rules but through informal, 'getting the job done' rules. Therefore it is not the legal 'something' that is done but the informal way that it is done that enables officers both to shape the course of justice and to present a picture of lawbreakers that officers feel to be the most likely to persuade others mentioned above of their deservedness or otherwise. These 'getting the job done' rules are to be understood in the context of this thesis as the 'getting the job of justice done' rules.

## **I. DOING SOMETHING WITH EXTRA-ORDINARILY BEHAVED LAWBREAKERS**

Given the practicalities of police work, what follows rests on the assumption that officers will more often than not initially be called to or come upon the extra-ordinarily behaved lawbreaker in public or private places other than the police station. 'Doing something' is often likely to involve removing them to the police station. The kind of action taken by police officers will determine the procedures that must be followed once inside the police station, procedures which take account of the fact that the seemingly normal lawbreakers may prove problematic and come to be defined as mentally disordered at any time during the course of detention. Therefore, the format of this part of the chapter is as follows:

- (i) 'Doing Something' Outside the Police Station.
- (ii) 'Doing Something' Inside the Police Station.

### **(i) Doing Something Outside the Police Station**

Lawbreakers who behave in extra-ordinary ways make themselves known to the police in diverse situations, in public or private places and when engaged in the most grave or the most minor breaches of the substantive criminal law. Therefore, and supplementing those bodies of law which relate, inter alia, to unlawful killing, to theft and to offences against the person, there is a broad range of legal provisions designed to maintain a state of peace and stability in society. These provisions are such that almost any display of unusual public behaviour reported to, or chanced upon, by police officers may constitute at the very least a breach of the peace or contravention of the public order legislation. Moreover, disturbances within the mind create disturbances of behaviour that society finds threatening to persons and/or property; as constituting a nuisance to domestic or community life; or as worrying in terms of the personal health and safety of the abnormally behaved themselves. While such behaviour may be perceived by the public primarily as a 'medical emergency', any elements of public disorder or actual or threatened violence to persons or property may equally lead to its being perceived in terms of criminality. In such circumstances and in the absence of any other readily accessible and available body, the public inevitably turn to the police as problem solvers.

Among the substantive rules of law there are those which most readily provide officers with a legal means of doing something with abnormal lawbreakers. What officers can and cannot do is defined by the rules by which policing is constituted and by which its activities and those of its personnel are regulated. Searle (1955:33) draws a distinction between constitutive and regulative rules (and this will be of some importance in later discussions on getting the job done):

Regulative rules regulate antecedently or independently existing forms of behaviour. But constitutive rules do not merely regulate, they create or define new forms of behaviour....Regulative rules regulate a pre-existing activity, an activity whose existence is logically independent of the rules. Constitutive rules constitute (and also regulate) an activity the existence of which is logically dependent on the rules.

These constituted forms of behaviour may be described as 'practices' according to Rawls' usage (1955:3:footnote 1)

as a sort of technical term meaning any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defences and so on, and which gives the activity its structure.

From the plethora of rules which create and define what may generally be described as the practice of policing may be extracted the rules which create and define what may be described in more specific terms as the practice of policing mentally disordered lawbreakers. Formal, explicit and 'abstract' rules (Carlen, 1976) devise and specify all of the procedures and courses of action which prevail and which are available when police officers define extra-ordinarily behaved lawbreakers as mentally disordered. In addition there are national or local policy or advisory rules of an extra-legal nature which officers must take into consideration (for example, Home Office directives on policies in relation to particular types of crime or offenders).

Police officers called upon to deal with situations involving lawbreakers who behave in out of the ordinary ways (and to do so with relative swiftness) have the choice of taking action, of doing something about such lawbreakers by way of the Mental Health Act 1983, by way of arrest or by way of inaction (and this will be further examined below). However, and as explained in the introduction to this chapter, the chosen course of action or inaction does not in itself signify lawbreakers' punishability or excusability. In other words, there exists no simple state of affairs whereby the punishable can be made the subjects of arrest and the excusable be made the subjects of place of safety provisions or of nothing at all and for two fundamental reasons.

The first of these involves a recognition that policing is about carrying out a multiplicity of functions. When police officers do their job they are simultaneously fighting crime, mediating disputes and performing some kind of social service. On the one hand this job embodies

dominant notions of policing as action, as challenge, as concerned with crime of people as unworthy of trust, of the need to keep at bay the encroachments of societal disorder (Holdaway in Stephens and Becker, 1994:71).

On the other, and according to Holdaway (in Stephens and Becker, 1994:71), a subordinate notion embodying

[i]deas about service to the public, about conciliation as the objective of dispute settling, about offering to help people in difficult and vulnerable situations, about minimal intervention, and more, are found in the vocabulary and actions of the ranks.

Any appearance of a control/care dichotomy is belied by the realities of everyday policing.

In effect, policemen [sic] frequently have to act as untrained and temporary social workers, vets



(with injured animals), mental welfare officers, marriage guidance counsellors, welfare officers, accommodation officers, child care officers, home-help to the infirm, and also as confidant and counsellor to people alone and in need of guidance. In brief, the police turn out when a crisis is happening and represent a visible, available and well-known agency which, more than any other mental health institution, has mobility and authority in situations where violence is often an element (Punch in Holdaway,1979:107)

Police work, moreover, is not a matter of care or control.

The complexity of policing means that in many situations officers take action that at first sight appears to be based upon control but in fact is based upon service and care (Holdaway in Stephens and Becker,1994:71).

Officers take courses of action (that is, involving arrest for breaches of the criminal law) with the intention of setting people upon the path towards criminalisation and punishment. These can equally be utilised with the intention of setting them on a path towards medicalisation and treatment by accessing the medical provisions that criminal justice has to offer (see below on 'Doing something inside the police station'). Moreover, the converse of this holds good. The control/care dichotomy is further belied by what medicalisation has to offer in the way of control, incapacitation and punishment, a notion fully discussed in Chapter 2.

Notwithstanding the reality of police work, care and control can form an uneasy alliance. According to Punch (in Holdaway,1979:110,112), police officers not only identify themselves primarily as crimefighters but also take the view that 'social work' tasks are trivial, time-consuming and of low status.

Police officers have neither been encouraged, nor properly trained to respond positively or professionally to demands for assistance from the public that do not conform to the stereotypical crime-fighting role of police (Edwards in Stephens and Becker, 1994:132).

This is particularly the case where the demands issue from domestic disputes which are perceived as a 'messy and unrewarding business' (Punch in Holdaway,1979:110), as 'intractable, unworthy of attention, or the complainant's own fault' (Reiner,1985:95). These sentiments, however, are not limited to an association with domestic disputes but are descriptive of what police work is often about. And that is the policing of persistently troublesome people. It is these kinds of people (who will emerge in more detail below) that officers are consistently called upon but find it most difficult to do something with, whether by way of action or inaction.

This leads to the second of the reasons that officers do not simply arrest the

punishable and invoke the mental health legislation or take no action in respect of the excusable. The police operate with a wide discretion, at its widest amongst officers on the beat. That they do so

is not just because they surreptitiously take it into their own hands but because they are formally allocated discretion on what constitutes an offence via vague substantive laws and wide procedural powers (McBarnet in Holdaway, 1979:33).

Their chosen courses of action or inaction are, as explained in the Introduction to this chapter, dependent upon weighing the risk that lawbreakers will get away with it against the risk that they, as officers, will get into trouble. What officers do or do not do, therefore, is intended to avert, insofar as is possible, that one risk which is considered to be intolerable. So, if the behaviour is of sufficient gravity, such as a serious assault or a sexual offence, then inaction is rarely if ever possible. The risk of trouble to officers who merely passed over such behaviour so that the excusable may get away with it originates not merely in the risk that the person will immediately re-offend and not merely because any consequent victim complaints would make officers' inaction more difficult to ignore. It is primarily because officers become responsible for dealing with the situation and if they get it wrong then they face what may well be the intolerable risk that they will be 'punished' for it (by way of internal disciplinary measures or through the courts). Thus, officers' functions of law enforcement and public protection provides justification for compulsory removal to the police station, postponing any immediate considerations of mental disorder until a later time.

However, the more minor or trivial the offence, the less risk of officers getting into trouble. In fact, it may be that some risk of trouble is involved if formal action is taken. Commonsense and the practical experience of dispute resolution and of the reaction of their fellow officers and superiors to previous similar incidents may suggest that to proceed in such circumstances will serve no other purpose than to see the case rejected either by their superior officers or by the Crown Prosecution Service.

Therefore, getting away with it (or otherwise) often results from a process of negotiation, explanation and mediation between police officers, lawbreakers and victims. The victimless offences created by the public order legislation are open to liberal interpretation of behaviour that would *prima facie* lead to a breach. A non-threatening (to self and others) and harmless display of abnormality may simply require a friendly word or warning. The more worrying the behaviour in terms of safety of the individual or safety of others, the less likely the individual to be 'moved along'.

Much can depend upon the familiarity of the officer with the people and places that the officer polices. 'Local characters' reputedly found in smaller towns, villages or neighbourhoods may well be returned to their homes. Familiar vagrants may be tolerated in the knowledge that they are harmless to themselves and to the wider public and that to face action leading to a fine or imprisonment would not provide them with either the money or accommodation that they lack. Again, the sheer size of officers' caseloads may deter additional unwelcome and unviable economic and practical action.

However, and as explained earlier, risk assessment can result in excusable people being subject (on account of the nature of their lawbreaking which makes officers unwilling to take the risk of letting them get away with it) to arrest and the consequent risk of punishment. It also results in punishable people being treated as mentally disordered (on account of the nature of their extra-ordinary behaviour which makes officers unwilling to take the risk of not letting them get away with it) and the consequent risk that they will benefit from disorder. Therefore, while officers have 'to achieve a particular objective [that is, moral justice] through the use of the legal form' (McConville,1993:11) (and while moral justice has to be justified with reference to the 'legal form' - see below) legal rules alone do not get the job of achieving moral justice done. The risks that are created by adherence to the 'legal form' are minimised by officers' use of rules which do get that job done. Therefore, the discretion that enables the police to use these rules to achieve justice 'is exercised according to police criteria rather than officially announced legal criteria' (McConville et al, 1993:16).

According to Reiner (1985:85), a

central tenet of the highly practical culture of policing is that you can't play it by the book,

in other words, the book which consists of legal and written down rules. The book which officers do, in fact, play it by is one that may be described as the 'working rule' book, consisting of constitutive rules which create the possibility or define the practice of 'getting the job done'. This metaphorical rule book comprises the summary rules, maxims and rules of thumb which do not require the 'stage setting of a practice' (Rawls,1955:22) which is logically prior to the rules but rather emerge from the 'decisions made on particular cases (which) are logically prior to the rules' (Rawls,1955:22). These are the rules that police officers apply because past experience and police commonsense dictate their situational utility. Past experience and police commonsense are informed by the facets of the 'working

personality' of police officers, described by Skolnick (1966:44) as those variables of 'danger and authority, which should be interpreted in the light of a 'constant' pressure to appear efficient'. These variables are, in fact, those which have been developed throughout the course of this thesis so far and they constitute

interdependent elements in the police world to which cop culture develops as a set of adaptive rules, recipes and rites (Reiner,1985:87-88).

One further point must be noted in relation to the concept of 'working personality' and this concerns the moral code that police officers work by.

Apart from specific party politics, the police tend to hold views on moral and social issues which are conservative (Reiner,1985:99).

A disapproval of traditionally 'immoral' groups such as drug addicts and homosexuals is co-existent with a tolerance of, inter alia, illicit heterosexual activities and the substantial consumption of alcohol (Reiner,1985:99) and a concern for the 'protection of the weak against the predatory' (Reiner,1985:89).

Reiner (1985:86 citing PSI:1983) usefully differentiates between the multiple purposes served by the rules which are brought to bear on the process of getting the job done:

'working rules' are ones which police officers actually have internalised so that they become effective principles which guide their actions; 'inhibiting rules' are external ones which have a deterrent effect - officers must take them into account in their conduct because they are specific, thought likely to be enforced and refer to visible behaviour, 'presentation rules' are used to impart an acceptable gloss to actions actually informed by different 'working rules'.

The categories comprise rules drawn from the spectrum of the formal and informal. And, as indicated in the introduction to this chapter and above, if officers are to avoid getting into trouble they must be prepared to justify to others that what they do and do not do is right and proper. It is because moral justice is most safely achieved not by stepping outside the rules but 'through the use of the legal form' (McConville,1993:11) that

[l]egal rules may well be used presentationally, rather than being operational working rules or inhibitors (Reiner,1985: 86).

*(a) Keeping out of trouble*

At a descriptive level, the process of justification can be considered sequentially. Self-justification is a private matter of conscience which can be framed, for example, in terms of compassion for persons and the circumstances in which they find themselves. What officers then do (or do not do) must be justified to their colleagues, to their superiors within the organisation of the police, to others of the criminal justice system and, through the forum of the trial, to the public. The implication is of decision-making as prescriptive and rational; yet rarely is it the step by step process that it would appear to be. On the one hand, and if encounters with lawbreakers are no more than routine and everyday, justification may not have to be offered to any one or more of those noted above: what is done will speak for itself. On the other hand, and where circumstances are out of the ordinary, justification may need to be offered to them all.

Importantly, the reality of police work means that officers are required to respond to difficult and dangerous situations in an authoritative and efficient way. This often does not permit the contemplative and reasoned use of prescriptive rules but rather demands an after-the-event explanation of the course of action that the officer deemed to be immediately necessary and deserved. Ex post facto justification of police action can, where necessary, be constructed rather than 'found' within the situation (Jefferson and Grimshaw in McConville,1993:27). As Bittner (in McConville,1993:16) explains in relation to instances of public disorder

[p]atrolmen do not really enforce the law, even when they do invoke it, but merely use it as resource to solve certain pressing problems in keeping the peace....The problem patrolmen confront is not which drunks, beggars, or disturbers of the peace should be arrested and which should be let go as exceptions to the rule. Rather, the problem is whether, when someone 'needs' to be arrested he should be charged with drunkenness, begging or disturbing the peace.

Furthermore, justification for the use of one rule often entails justification for not using another. Officers, therefore, must deliberate whether the various excuses, exceptions and defences which are understood by organisational others and which constitute an important part of the practice apply to one's own case (Rawls,1955:17). Equally, where those rules are maxims or rules of thumb (summary rules), there must be a justification for departing from the tried and tested guidance of past experience to treat a particular case on its merits (Rawls,1955:24).

Moreover, police officers may, in dealing with a situation, invoke rules which were not designed to be used in that context;

the rule invoked to give meaning to an event ex post facto may not be the rule invoked or created to constitute its situational meaning (Carlen, 1976:11 citing Rawls, 1955).

(See also Reiner, (1986) on 'presentational rules' above). And since actions and their justifications (behaviour and language) are possessed of no inherent and objective meaning, police officers

can claim that they are doing one thing, think that they are doing something else and find that other people insist that they are doing something entirely different again (Carlen, 1976:11).

This is the reason that the police powers (to be discussed below) which authorise them to do something with extra-ordinarily behaved lawbreakers can be employed to control, to care, to punish, to cure and so on. That rules authorise and justify a diversity of functions enables police officers to perform the apparently contradictory jobs of crimefighters and of social workers described earlier.

These police powers which constitute the practice of the policing of the mentally disordered lawbreaker are as follows. Where informal resolution presents too great a risk of trouble and where police define the extra-ordinarily behaved lawbreaker as mentally disordered there are two formal courses of action open to them. One is to take people to a place of safety under s136 of the Mental Health Act 1983 and the other is to arrest them and invoke provisions relating to vulnerable, mentally disordered suspects.

#### *(b) Doing something by way of s136*

Section 136 of the Mental Health Act 1983 empowers police officers to remove to a place of safety any person that they find in a public place who appears to them to be suffering from a mental disorder and is in immediate need of care and control. Officers must believe it necessary that such action is warranted in the interests of the mentally disordered person or any other person. This provision, therefore, enables lawbreakers displaying worrying and grossly abnormal behaviour to be removed swiftly from public places and into a place of safety (namely a hospital, police station, accommodation specifically allocated to the mentally disordered or any location in which the occupier is prepared to temporarily receive the mentally disordered person (s135(6) Mental Health Act 1983)). This is generally the nearest police station unless (rarely) the location of and liaison with psychiatric facilities permit a more appropriate location (for example, a hospital psychiatric unit). The power may be exercised regardless of any actual or suspected commission of criminal offences.

Consequently, it affords justification to officers on the beat that something has been done while simultaneously deferring until a later time and to another person the decision as to whether or not lawbreakers should be the subject of criminal proceedings.

The use of this section is, in fact, approved in policy initiatives operative within police forces. The Department of Health Codes of Practice on the Mental Health Act 1983 urges the establishment by chief constables, the health and the social service authorities of a co-ordinated local policy which secures a person's competent and speedy assessment by a doctor and an authorised social worker. In so doing the Codes provide justification, if such is required, for the avoidance of potentially punitive action against those who do not deserve it.

*(c) Doing something by way of arrest*

An arrest activates the Police and Criminal Evidence Act 1984 and its Codes of Practice, initially the requirement that lawbreakers be told the reason for their arrest and be cautioned. On arrival at the police station, and in accordance with the Act, arrested persons and the responsibility for their welfare during the course of any subsequent detention are handed over by the arresting officer to the custody officer, normally an officer of the rank of sergeant. (The custody officer plays a similar role in relation to those brought to a police station as a place of safety under s136). Custody officers are not bound to ratify the decision of the arresting officers. Nevertheless, and albeit that their reflections upon the character, condition and circumstances of the extra-ordinarily behaved lawbreaker may be somewhat more leisurely than that of the arresting officers, these reflections are subject to the pressure of time and other pressing duties. Moreover, any diversion on the basis of mental disorder that custody officers can engage in at this stage is necessarily informal and limited merely to releasing from the police station without charge people who deserve to get away with it. There is no authority to demand that any person (family member, or representative of the welfare or psychiatric services) takes responsibility for any form of care. Therefore, while a decision to divert finds approval in Home Office Circular 66/90 (which urges that in the case of mentally disordered lawbreakers alternatives to action which will result in prosecution must always be considered), the wheels of diversion are only set in motion by following formal procedures. These involve, inter alia, remand in custody or release on bail from the police station pending the decision itself (for example, consultation with the crown prosecutors, the administration of a caution or diversion into appropriate treatment facilities).

Custody officers, as key figures in relation to the safeguarding of the rights of any

detainee, are excluded by the Police and Criminal Evidence Act 1984 from the investigation process in order that they may sustain an independence and impartiality throughout the course of detention, questioning and (possible) charge. They are further responsible for, inter alia, the documentation of the entire course of detention, recording such details as medical attention or legal advice sought and received. Lawbreakers who behave in extra-ordinary ways are deemed in law to be vulnerable and 'at risk' if

an officer has any suspicion or is told in good faith that a person....may be mentally ill or mentally handicapped, or cannot understand the significance of questions put to him or his replies (Code C Annex E),

This leads to their being 'treated as a mentally ill or mentally handicapped person for the purposes of this Code' (Code C). All lawbreakers detained in the police station are put at physical and/or psychological risk by their compulsory subjection to the authority of the police. The mentally disordered are deemed to be more 'at risk' than their 'normal' counterparts and so are entitled not only to the protection afforded by the custody officer and a legal adviser but also by that of an 'appropriate adult' (see below).

## **(ii) Doing Something about Extra-ordinarily Behaved Lawbreakers Inside the Police Station**

Doctors, usually police surgeons and psychiatrists, act as gatekeepers to the benefits or detriments of mental disorder by virtue of their capacity to make authoritative clinical diagnoses of conditions which open the door to treatments. Therefore, following upon police officers naming persons as mentally disordered is the requirement that a doctor be called to the police station to confirm or deny that those whom officers call mad are in fact medically mad. So, s136 of the Mental Health Act 1983 requires that within 72 hours (but more usually within 6 hours) the 'patient' must be assessed by a doctor (and by an approved social worker) with a view to their voluntary or compulsory removal from the police station and into a more appropriate place of safety.

The Police and Criminal Evidence Act 1984 requires that

..if a person brought to a police station appears to be suffering from mental illness, or is incoherent other than through drunkenness alone...the custody officer must immediately call the police surgeon or, in urgent cases, send the person to hospital or call the nearest available medical practitioner (Code C Annex E).

Where 'mentally disordered' persons are brought to the police station under arrest and where their suspected offences are to be investigated, fitness for continued detention and



questioning must be medically authorised. Once that authority is given, the risk that police officers will get into trouble for any failure to safeguard the well-being of vulnerable lawbreakers is largely alleviated. And it is officers' unwillingness to make a mistake and put at risk the well-being of suspects that leads them to play it safe by calling a doctor to examine those undeserving suspects whom officers believe to be feigning madness in an attempt to get away with it. Such attempts, as will be seen later in this chapter and in Chapter 5, are dealt with by the use of 'getting the job done' rules. Access to any incapacitation, punishment or benefit that treatment has to offer is controlled by police surgeons and psychiatrists based on their assessment of the degree of risk that the extraordinary behaviour presents.

Section 2 of the Mental Health Act 1983 requires that, before mentally disordered people can be admitted to hospital, a diagnosis be made that the mental disorder is of such a degree that compulsory detention is necessary not only for assessment purposes but also for their own health or safety or for the protection of others. Since such an application must be supported by the recommendation of two medical practitioners it is not a decision that can be taken by police surgeons alone. (In cases of emergency, recourse may be had to S4, the criteria being that admission is of urgent necessity and the use of the above would cause unreasonable delay). However, and in the light of contemporary mental health policies (see below), compulsion may be eschewed in favour of persuasion and it may be possible (and indeed preferable) to convince people that it is in their best interests to accede to treatment of their own accord.

However, while people may be extra-ordinarily behaved and while they may present risks to themselves and to others, they are not medically disordered unless that behaviour is classified into one of four categories specified in s1 of the Act: mental illness (undefined by the Act); severe mental impairment; mental impairment (impairments differing only in the degree of arrested or incomplete development of the mind including significant impairment of intelligence and social functioning and associated with abnormally aggressive or seriously irresponsible conduct); and psychopathic disorder (a persistent disorder which may include a significant impairment of intelligence). Further, the latter two categories require that the treatment must be appropriate and likely to alleviate or prevent a deterioration in the condition and that personal or public safety warrants detention. The diagnosis of persons as 'psychopathic' or (in more common usage) as 'personality disordered', is one which is fraught with conceptual and practical difficulty (the condition designated 'psychopathy' being one that causes a divide as to its treatability within the medical profession itself (Prins

1980)). Therefore, the more gravely mentally impaired and mentally ill are presumed to be treatable although not inevitably through hospitalisation and far from inevitably under compulsion. The less mentally impaired and the personality disordered are those whose treatability and treatment is dependent upon the degree of risk that the abnormal behaviour presents.

This brief statement of the law must now be set in the context of the working relationships between the police and doctors in the police station. It is not any part of this thesis to examine the clinical ways in which doctors make diagnoses of disorder. It *is* a part of this thesis to show how their diagnoses are in part shaped by non-clinical settings in which they are made. For it is when police officers call a doctor to examine an extra-ordinarily behaved lawbreaker that moral justice meets medical diagnoses. If the deserving are deemed to be mentally disordered and treatable under conditions which appropriately reflect their deservedness then, for officers, justice is done. Where the undeserving are deemed to be 'normal' or to be untreatable justice is similarly done. The morally innocent, therefore, deserve to be diagnosed as mentally disordered and be treated in the least coercive of conditions. Similarly, where the morally guilty are deemed to be 'normal' and untreatable, their subsequent punishment is no more than they deserve.

Further, it is where police officers call a doctor to examine extra-ordinarily behaved lawbreakers that the risks of police 'trouble' meet the risks of medical 'trouble'. Police definitions of lawbreakers who do and do not deserve to be mentally disordered are not invariably shared by members of the medical profession. For the police, not only is there the risk that doctors will be deluded by people who are trying to get away with it but that they will fail to appropriately diagnose the very people whom the police desire to be mentally disordered. Deserving lawbreakers are often those whom police officers (and the rest of the criminal justice system) wish to be rid of on account of the violent or chronic nature of their offending. However, the medical profession have no desire to take responsibility for all of the problem (and therefore deserving) people who pose intractable difficulties for the police and for whom psychiatry has no ready solution (see further on this below). While police officers may be busy depicting a deserving lawbreaker as 'deluded maniac', doctors may be busy depicting that same lawbreaker as one of 'criminal-having-given-way-to-the-propensities-of-his-evil-nature' (and vice versa in relation to the undeserving) (Riot in Foucault, 1975:234). So, in the 'competition between the penal and medical authorities' and the consequent 'replacement of one method of control by another' (Castel in Foucault, 1975: 251) there are people to whom no one desires to lay claim.

Consequently, for police officers, moral justice is done where their lay diagnoses of deservedness are mirrored by clinical diagnoses which classify the behaviour as mentally disordered, as treatable and in an appropriately incapacitating, punitive or beneficial way. But these criteria which form the basis of accord are the same grounds upon which doctors struggle to disclaim (and often do succeed in disclaiming) as undeserving some extraordinarily behaved lawbreakers whom the police hold to be deserving of mental disorder but who threaten to be medical 'trouble'. As will become apparent from what follows, it is here that police and medical understandings of mental disorder may differ.

*(a) Conflicting diagnoses*

It emerged in the course of Chapters 1 and 2 that out of the ordinary behaviour does not become defined by police officers as mentally disordered in a cultural vacuum but rather is a product of the contextual relativities in which the behaviour occurs. Medical diagnoses are similarly formed.

There is a certain fluidity in the symptomology of mental disorder as it informs medical diagnoses. Doctors draw 'on our everyday conceptions of what it is to be 'mad', 'crazy' or 'daft' (Campbell and Heginbotham, 1991: 33). Furthermore, there is an

extraordinary range of types of signs and symptoms that are used in the formulation of what counts as a specific disease [including] physical, cognitive, affective, behavioural and social features (Campbell and Heginbotham, 1991:45).

As there exists no objective social symptomology of madness (see Chapter 1) so there is no behaviour that is essentially and clinically indicative of mental disorder, it being

evident that the diagnoses do not depend on the occurrence of one or two major symptoms or signs which occur in all cases but require only that some of a number of features are observed, without the necessity that any particular one or number of these is present,

and, moreover,

the same signs and symptoms, such as depression, recur in a number of ostensibly discrete illnesses (Campbell and Heginbotham, 1991:48).

Among the extra-ordinarily behaved lawbreakers whom officers designate as mentally disordered are those who are located on 'the boundary between the normal and the pathological' (Scull, 1993:391-2). Doctors are required by these officers to do no more than classify the deserving into a category of mental disorder and the undeserving into a category

of 'normality' or untreatability through which justice may be the most effectively ensured.

It is in the absence of diagnostic consensus that conflict and misunderstandings between the police and the medical profession arise, that is, where doctors make the 'wrong' decision. Previous chapters have explained the ways in which extra-ordinarily behaved lawbreakers come to be classed as excusable or punishable and, in consequence, as deserving or undeserving of the effects of mental disorder. Thus, as Ericson (in McConville, 1991:12) explains,

the detective is involved in a process of transforming an individual event into categories which have a character of permanence and exactness. These categories are drawn from the available stock of categories stored within the police and wider legal organizations.

These categories form the basis of what police officers know about mental disorder (and so they also form the basis of the picture of the lawbreaker that is painted for others referred to above). Therefore, when officers determine that lawbreakers are mentally disordered and call a doctor they are acting

as if they are in a state of perfect knowledge, and as if this 'perfect knowledge' has fairly stable constitutive elements (Carlen, 1976:88).

Thus it is that despite having neither the knowledge nor the authority to make clinical diagnoses of disorder, officers can be sure that they are right about which lawbreakers 'really' are and 'really' are not mentally disordered. Where diagnoses conflict, it is doctors who are wrong (and, as will be seen below and in Chapter 5, are wrong in that officers have lost a potential solution to the problems posed by troublesome people).

Struggles to claim or disclaim lawbreakers as deserving or undeserving of disorder (as explained above) take place in what Scull (1993:392) calls the 'theoretical indeterminateness of the concept of insanity' (Scull, 1993:392). It is here that contemporary medical knowledges and everyday police commonsense converge with and diverge from the other. The

theoretical indeterminateness of insanity .... in the nineteenth century, stretched the boundaries of mental disturbance...to encompass all manner of difficult, decrepit, socially inept, incompetent and superfluous people (Scull, 1993:392).

## Psychiatrists

evinced a willingness to deal with almost any and all people whose behaviour the community

found intolerable (Scull,1993:351).

Contemporary diagnoses are now constituted by different ways of medical thinking. The evolution and large scale introduction of psychotropic drugs and the economic reality of maintaining the asylum have been accompanied by a sustained critique of the adverse effects of institutionalisation, these conditions making both possible and justifiable the transformation of mental health care and treatment. Drug therapy is intended to render the symptoms of many previously intractable conditions open to relief, thereby affording to significant numbers the opportunity of an approximation of a normal life outside the hospital (except that medication may be rejected or forgotten when not administered under a constant supervisory regime). The sources of support necessary to sustain the mentally disordered in the community are intended to be provided through 'a wide range of welfare programs'. Consequently

the opportunity cost of neglecting community care in favour of asylum treatment - inevitably far more costly than the most generous scheme of welfare payments - rose sharply (Scull,1977:135).

However,

aftercare facilities would have had to be extensively present; but this would have been extremely costly, and if the program was to realize financial savings they had to be substantially absent. They are absent (Scull,1977: 142).

The critique of the institution as destructive and anti-therapeutic (for example, Goffman,1961) and as custodial warehousing (for example, Scull,1977) enabled an ideological gloss to be placed upon the move to community based alternatives (except that account was taken of critics who argued the necessity of some form of asylum for the respite of the most vulnerable and so limited hospital facilities have been retained).

The reality of the contemporary medical approach to mental disorder is reflected in its uneasy attempt to marry together idealism and expediency. While for the decarcerated

these developments promise the deliverance of people with severe mental illness from the constraints of the regimes in which they had previously been maintained, regimes in which they had been sentenced to a life-long servitude as mental patients, excluded from society and exiled in the space of their illness [it is also the case that] far from returning home after a long period of exile, many people with mental illness are being ejected from the refuges which over a long period had protected them from the brunt of market forces and told to go away and shift for themselves as best they can (Barham,1992:99).

Scull (1977:152-3) goes further. While some post-institutional and community treatment facilities are in place

for many...ex-inmates and potential inmates, the alternative to the institution has been to be herded into newly emerging 'deviant ghettos'...Many become lost in the interstices of social life, and turn into drifting inhabitants of those traditional resorts of the down and out, Salvation Army hostels, settlement houses, and so on. Others are grist for new, privately-run, profit oriented mills for the disposal of the unwanted - old age homes, halfway houses, and the like. And yet more exist by preying on the less agile and wary.

The virtue of the asylum was that it provided

a means of dispensing with all sorts of disorderly, disturbing and disruptive individuals [thereby expanding] the notion of the intolerable....and simultaneously [introducing] a wider conception of the nature of insanity (Scull,1993:352-353).

However, as Scull (1997;1993) makes apparent, hospitals no longer wish to admit people who not so many years ago would have been welcomed in. On the one hand, the

psychiatric profession has...succeeded in persuading a wider public to take seriously its claims to possess an expertise resting upon a scientific basis (Scull,1993: 392).

But on the other hand,

people who in any commonsense judgement behave in an abnormal fashion will be proclaimed by the psychiatrist as not suffering from mental illness. Or.. that it is a case of 'personality disorder' (a catch-all term for anyone who departs from average, especially if a misfit or social nuisance as well). Further it will be explained that no treatment is possible. Commonly enough, the psychiatrist senses a duty to neither so great as to keep 'his' (sic) hospital free of troublesome people (Bourne in Ramon,1988:243).

Ironically, it is among the population of the 'troublesome' who are unattractive to psychiatry that the very lawbreakers whom police officers believe to be the most deserving of the (incapacitating, punitive or beneficial) effects of mental disorder are found. In other words, the persistently problematic people for whom psychiatric cure, rehabilitation or containment appears to offer a more effective solution (or a more effective justice) than the limitations of punitive criminal justice measures. (It may even be said that police officers are looking to doctors to sort out the trouble that practitioners of contemporary psychiatry have created).

The origins of extra-ordinary and troublesome behaviour are various. It may result from a state of what may be termed 'inadequacy' where a person simply lacks the ability to live a life which accords with societal expectations. People who manifest a lack of skills in

relating to others or to everyday life often fall foul of society, bureaucracy and the law, swelling the numbers of excluded and deviant populations. For example, an ever-present problem for the police is constituted by chronic 'drunkards'. Sometimes alcoholic and always difficult, such people present almost insoluble management problems to the police and to the wider criminal justice system. An extension of the difficulties presented by the problem drinkers is to be found among drug users. Both groups threaten other members of society since their addictive survival necessitates a steady financial income. For many such an income is not generated by a salaried position but by the benefits system and supplemented by criminal activity.

Given as examples, such people are nevertheless representative of the lawbreakers who perpetually shift in and out of mental disorder, of punishment and treatment. Officers define them as deserving and disordered only to see them defined as undeserving and normal by doctors. On occasion the opposite may happen. Where psychiatric or other appropriate treatment facilities become available or where behaviour appears to be so dangerous that doctors risk getting into trouble if they do not take responsibility for the lawbreakers involved, police officers then can see both the deserving and undeserving clinically diagnosed as mentally disordered. Therefore, and on the one hand, mental illness, mental impairment or personality disorder may be the medical explanation given for their behaviour. On the other hand, it may not. The effect of drink or drugs or impoverished intelligence may or may not produce a classifiable mental disorder. Treatment may or may not exist that will effect a cure or alleviation of their state. The Mental Health Act 1983 (s1(3)) permits doctors to include or exclude as mentally disordered the promiscuous, the immoral, the sexually deviant and those intoxicated by drink or drugs in its recognition that mental disorder may be accompanied by or associated with any one or more of these categories. Treatability and modes of treatment are further dependent upon risk (see above). In other words and according to Barham (1992:130) there exists a 'tacit legitimization of ambiguity'.

#### Current policy recognises

that to conscript people with mental illness as full-time mental patients, and force them to renounce their social identities on account of their psychiatric histories, is for the most part both unnecessary and undesirable.....a severe mental illness need no longer be a barrier to ordinary human recognition and the entitlements of citizenship....[and] the person with mental illness is now primarily thought of as 'partly mad' rather than 'wholly mad' (Barham,1992:100)

Consequently, where police and medical discourses about the diagnosis and treatment of the

mentally disordered meet, police commonsense experiences conceptual difficulties with the notions of people who appear to them to behave like mad people but who doctors determine not to be mentally disordered; who are mentally disordered but untreatable; who are mentally disordered but who cannot be compelled to undergo treatment; who are mentally disordered but who are to be treated in the community. The 'modes of social control exerted in the past become part of the moral and definitional context [of the present]'(Rock in Scull,1993:9):

ever since segregative control became the dominant mode of managing deviance, the public has shown consistently little desire or inclination to have officially labelled, serious deviants returned to their midst (Scull,1977: 141).

Shifts in the dominant medical mode of managing deviance have not necessarily brought about shifts in police perceptions of the management of extra-ordinary and problematic behaviour. The Mental Health Act 1983 (above) enables compulsory and indeterminate hospitalisation of the manifestly disordered; those whose behaviour is so bizarre, so grossly mad and so threatening to themselves and to others that safety considerations forbid any course other than compulsory hospitalisation. Some of the intolerably behaved lawbreakers whose behaviours would once have been judged to present a source of danger can no longer be accommodated and indeterminately contained within institutions. Nor may others be compelled to undergo treatment. For those lawbreakers who are not mad enough, innovations in treatment, the closure of hospitals, open door polices in those remaining and restricted alternative community provision have resulted in a dearth of appropriate placements. Appropriate, that is, as far as police officers are concerned for the doing of justice. Such people are thereby freed to present the same problems to the same people in the same places wherein lay the origins of their involvement with the police. It may be that the moral and definitional context of the police present is that of the medical past.

*(b) The consequences of diagnoses*

Doctors' diagnoses of lawbreakers in police stations generate consequential and possible courses of formal and procedural action for officers. Should the subjects of detention under s136 of the Mental Health Act 1983 be deemed to be mentally disordered and treatable and to require hospitalisation the responsibility and authority for their continuing detention is relinquished to doctors. Any criminal proceedings in respect of their offending behaviour are not precluded by their medicalisation and, should officers feel it to be in the interests of justice, such proceedings may be pursued at a later date. Where place of safety detainees are



diagnosed as either 'normal' or 'untreatable' officers are faced with the choice between pursuing their offending behaviour or releasing them from detention without further action. It must be emphasised here, (and particularly in the light of the discussions on this issue in Chapter 5) that when a doctor disclaims extra-ordinarily behaved lawbreakers as a medical problem it does not mean that their behaviour ceases to be any the less extra-ordinary to the police. Police officers do not cease to 'know' that they are mentally disordered and believe them instead to be everyday criminals. Officers must, therefore, carefully assess the risk of trouble involved in merely releasing them against the risk of pursuing the only other course of action open to them, that is, to continue their detention as suspects. It is where officers' best efforts to achieve moral justice (for example, by depicting lawbreakers to doctors in ways which present them as deserving or undeserving of mental disorder) are thwarted by medical diagnoses that other means to secure justice must be utilised. As will be seen in Chapter 5, whether it is the deserving who are to be denied the status and effects of mental disorder or whether it is the undeserving who are to receive them, officers continue to make sure that the job of getting justice is done.

Attention must now turn, therefore, to the consequential and possible courses of action which are relevant to the subject matter of this thesis and which follow when lawbreakers who entered the police station as a place of safety or under arrest are not mentally disordered enough to be removed to hospital. Now most properly described as mentally disordered people who are suspected of the commission of a criminal offence, they are deemed by doctors to be fit to be detained and fit to be interviewed. The first of these courses of action is that an 'appropriate adult' should be called to attend the police station throughout the duration of the detention; the second is that a legal adviser should attend the police station if the detained person so wishes; the third is that the police may wish to consult the prosecuting authorities about the nature of any present and future criminal proceedings.

*(c) The 'appropriate adult'*

Code C Annex E of the Police and Criminal Evidence Act 1984 requires custody officers to contact persons who may act in the capacity of 'appropriate adults' as soon as is practicable after the decision to detain lawbreakers who are now considered to be 'at risk' or vulnerable suspects. Such persons must be informed of the grounds for detention and location of 'at risk' or 'vulnerable' suspects and that their presence is requested at the police station. 'Appropriate adults' may be drawn from a number of alternatives suggested in the Code of Practice: a

relative or the guardian of the suspect; a person experienced in dealing with the mentally disordered; or any other responsible adult. Under no circumstances must the task be undertaken by an officer or employee of the police force (Code C Annex E).

'Appropriate adults' act as agents of vulnerable suspects. On their arrival at the police station and in the presence of the suspect, 'appropriate adults' must be given information relating to the suspects' rights, particularly the grounds for detention and the entitlement to legal advice. The caution must also be administered. Questioning of the suspect and the signing of any written statement must not take place other than in the presence of the 'appropriate adult'. 'Appropriate adults' must be informed by the police that their task is, firstly, to

advise the person being interviewed and to observe whether or not the interview is being conducted properly and fairly; and secondly to facilitate communication with the person being interviewed. (Code C Annex E).

Detention in police stations is subjected to regular reviews and 'appropriate adults' may make representations to the review officers as to the need for continuing detention. Their presence is also necessary at any intimate searches and if and when the custody officer charges the suspect. Importantly, their ability to exercise the entitlement to legal advice on behalf of the suspect provides access to assistance that the vulnerable themselves may be incapable of seeking.

The presence of 'appropriate adults' in the police station is intended to minimise the risks that are threatened when lawbreakers who behave in extra-ordinary ways are detained in police stations. These risks threaten both police officers and lawbreakers alike and centre upon the potentially adverse consequences which may come about when the latter make admissions about their involvement in criminal behaviour. The risk to such people is not that they make admissions to police officers which may serve to incriminate them. Indeed, and as will become apparent in this chapter and more fully in Chapter 5, it is far from the case that admitting to the commission of a criminal offence is inevitably disadvantageous. Rather the risk that threatens those who suffer from impaired states of mental health is that they are vulnerable to the exercise of persuasion or coercion by skilled investigators in psychologically stressful conditions of detention and which results in admissions being unjustly obtained.

The risk to officers is that the interrogation of suspects, whether in overly persuasive ways or not, does not necessarily result in their getting at the truth. Where the suspects are at

the time of the interview or in the future defined as suffering from mental disorder, the potential unreliability of the admissions is compounded by the means by which it was obtained. If officers fail to follow the rules, the value of such evidence at trial is compromised. 'Appropriate adults' help keep officers out of the trouble that would follow were evidence to be excluded by the prosecutors and the courts. In offering a measure of support and protection to suspects during the whole of the detention period and most particularly during the interview, admissions that would otherwise be 'unreliable, misleading or self-incriminating' evidence (Code C Annex E) become good grounds for obtaining the conviction of those who deserve to be convicted.

Moreover, and as noted above, admitting to criminal behaviour is not inevitably a disadvantageous course to take. The criminal justice system tends to look more favourably upon those who do not waste its time and money in pleading their innocence and this approval is generally reflected in the passing of a lesser sentence than the offence would otherwise have attracted. On a pragmatic level, officers are well aware that moral justice may be more swiftly achieved by the legal means of a minimal sentence rather than through protracted and risky pleas of innocence which may or may not succeed. Therefore, benevolent coercion can be exercised through the 'appropriate adult' and those who deserve to be punished and those who do not can be persuaded to admit to their crimes. Since officers cannot properly achieve justice in the absence of 'appropriate adults', they must rely on 'appropriate adults' to do the job for them. And to do this they must ensure, insofar as is possible, that they choose the best 'appropriate adult' for the job.

It is recommended that experience and training in the care of the mentally disordered is a priority when seeking 'appropriate adults' since the attendance of qualified persons is 'more satisfactory for all concerned' (Code C Annex E). However, the preference of the suspect for a relative will prevail if practicable. In the light of the relatively onerous duties that the Police and Criminal Evidence Act 1984 places upon 'appropriate adults', the ideal candidates would appear to be independent and assertive individuals, uninvolved with the suspect on an emotional level, undismayed by the police and their place and procedures of detention but nevertheless being fellow professionals with a shared interest in efficiently getting the job done. The candidates appearing to possess these qualities to a greater degree than family or friends are social workers. However, social workers 'experienced in dealing with the mentally disordered' may not be readily available, particularly if detention is 'out of hours'. Officers may have to fall back on alternative and available adults.

According to Zander (1990), in the overwhelming majority of cases, the 'appropriate

adult' is a parent or guardian or other relative. The reassurance and protection which is to be derived from those in proximate family relationships would ostensibly appear to benefit the vulnerable. Similarly, their non-professionalism would appear an impediment to the police. But families often fail these suspects and benefit police officers and in two respects. Despite the ties of family or friendship 'quite commonly the 'appropriate adult' sides with the police against the suspect' (Zander 1990:167). This attitude suggests that a presumption of guilt has already been made and that facilitation of communication may involve convincing the suspect to make damaging admissions, whether or not founded on the 'truth' (see Chapter 5). Further, officers are under a duty to inform 'appropriate adults' that they are expected to do more than merely observe and yet they are under no obligation to further the explanation given in Code C Annex E (above) on how these responsibilities are to be discharged. A limited understanding of their role (and this applies to both relatives and to social workers who may be untrained or unadvised within their profession on the nature of this task) may render the people whom officers call to be 'appropriate adults' as inappropriate for the task. So, acting in accordance with the rules simultaneously gives every appearance that legal justice has been done which in turn keeps police officers out of trouble while permitting them to get on with the job of getting moral justice done.

*(d) The legal adviser*

S58(1) of the Police and Criminal Evidence Act 1984 entitles all suspects who are held in custody and who wish to do so to consult a legal adviser at any time. Where the suspect is being treated as vulnerable or at risk, access to a legal adviser is in addition to that of an 'appropriate adult'. So, if vulnerable suspects (or their 'appropriate adults') request legal advice no questioning should take place until solicitors (or their delegates) have given that advice either in person or by telephone. This is subject to the exception of an authorised delay, for example, where a serious arrestable offence is alleged and if such contact with a solicitor and thus the outside world would result in the hindrance of the police investigation. Legal advice extends beyond mere recommendations to suspects on what and what not to say to the police. It also affords opportunities, inter alia, for representations to be made about the value of the incriminating evidence and the need for continuing detention and for advice to be given on the subjects of submission to identity parades, fingerprinting and searches. The advice that is given is intended to further the best interests of the client. However, 'best interests' connotes no objective or prescribed actions to be taken on behalf of clients who behave in extra-ordinary ways. Best interests are dependent upon the circumstances, the

contextual relativities (discussed in Chapter 1) of the situation. Thus, whether it is in the best interests of vulnerable suspects to lay emphasis upon their mental condition depends upon various factors pertaining to the gravity of the alleged offence, the gravity of the mental disorder and the attitude of the police to either one or both of these. Not least among these factors is the nature of the person who is giving the advice. It is not inevitably the case that legal advice is dispensed by experienced solicitors. Delegates are despatched to police stations whose professional expertise and duration of professional service varies. Neither clerks nor legal executives are fully qualified members of the legal profession. Even solicitors may well have little experience of abnormal lawbreakers who become vulnerable suspects. Officers must choose (as far as it is within their power to do so and given all of the circumstances of the case) the type of representative who will best serve the interests of justice through serving the best interests of their client.

Legal advisers pose a significant threat to the doing of justice in relation both to those whom officers believe to be deserving of the adverse or beneficial effects of mental disorder and to those who do not. Yet the threat is not best averted by failing to inform vulnerable suspects of their entitlement to legal advice or by refusing or deterring the presence of a legal adviser. To take that course of action is, for officers, to risk getting into the same kind of trouble which follows upon the failure to call an 'appropriate adult'. The tainting of evidence obtained in circumstances where rules are broken adversely affects further criminal proceedings and consequently adversely affects officers themselves (see above on exclusion of evidence and so on). Rather, the threat is most safely averted by officers working within the rules: *inter alia*, by exercising as much influence as is possible over suspects' choice of advisers and the circumstances under which that advice is given (for example, by telephone or in person); by drawing upon established professional relationships and presenting suspects in a light most favourable to achieving a shared perception of them as 'really' mentally disordered or as frauds trying to get away with it.

The threat posed to officers by legal advisers lies in the nature of their role as representatives of their clients' best legal interests, interests which may be far removed from those by which officers seek to secure justice and which will be more fully explained below. These interests diverge particularly in respect of the effects of being defined as mentally disordered and of the making of admissions.

Officers may believe that for lawbreakers to be diagnosed and treated as mentally disordered is a 'good thing' which enables the morally innocent to avoid the pains of punishment and which enables the persistently troublesome to be incapacitated or punished.

However, this is not a belief that is necessarily shared by the morally innocent, the persistently troublesome or their legal advisers. A diagnosis of mental disorder can be 'a terrible thing to do. It annihilates the persons' identity as a responsible adult' (Bott in Barham, 1992:128). For some of those so diagnosed it

absolves [them] of responsibility and entitles [them] to care. But the stigma is enormous, and admission to hospital, especially for the first time, is a catastrophe. It alters one's sense of self irrevocably (Bott in Barham, 1992:128).

Therefore, and where mental disorder creates the possibility of diversion from the criminal justice system

[in] view of the consequences that are typically associated with such diversion, if given a choice it is likely that many defendants may opt to forgo the promised benevolence and accept the determinate criminal sanctions (Shah in Barham, 1992:103-4).

In their aversion to the effects of benevolence, suspects are often supported by their legal advisers for whom mental disorder can be equally perceived as anathema to the best interests of their clients and not inevitably on humanitarian grounds alone. The more trivial the offence and its penalty, the more likely it is that the best interests of the suspect are served by a minimal penalty such as a fine. The spectre of indeterminate periods of treatment following upon relatively minor infractions of the law hang over police station encounters between legal advisers and their clients. Moreover, to deal with clients whose mental health is at issue renders cases as problematic, for example, as requiring medical reports and adjourned court hearings. Clients who are persistently troublesome can be an all too regular occurrence for legal advisers who undertake a great deal of criminal work and who are reimbursed through legal aid. 'Mental disorder' can then become too time consuming and economically unviable to be in the best interests of anyone at all.

The best interests of justice and the best interests of suspects may come into opposition in relation to the making of admissions. In calling the legal adviser to the police station, police officers face the unwelcome prospect that the advice given will be to remain silent. Attendant upon silence is the necessity for officers to seek out further and good corroborative evidence. It is preferable that the legal adviser be convinced that justice for suspects would be better served if they were to speak and to admit to their lawbreaking. As explained above and in the discussions on the 'appropriate adult', despite the risks to vulnerable suspects associated with the making of admissions, silence is not always the

wisest course to follow and legal advisers are well aware of this. Therefore, while the advice to remain silent can be used as a temporary measure which permits legal advisers to assess the situation and the strength of the case against suspects, the evidence suggests that, with or without the advice of a legal adviser, suspects succumb to the benefits of 'telling the truth'. People who are detained in police stations tend to rely very much on the advice of others (police officers, 'appropriate adults', legal advisers) when assessing their possible fate in any subsequent criminal proceedings, the more so if their understanding is clouded by impaired mental health. Admitting to guilt in a police station (and at an eventual trial) represents a saving of judicial, prosecutorial and police time, costs and efforts. The risk to suspects of suffering the more severe pains of punishment are reduced since a guilty plea usually results in the imposition of lesser penalties than the crime would otherwise attract if a finding of guilt followed an unsuccessful plea of innocence. However, if suspects are advised on the basis of the satisfaction of the extra-legal interests of the justice system, and the fact that the overwhelming majority of defendants do plead guilty at their trials (e.g McConville and Baldwin 1981) suggests that many among them may be so advised, then both innocent and guilty alike may be persuaded into confessions. Crucially, therefore, averting the threat of trouble to the police can result in creating trouble for suspects (see further on this in Chapter 5).

*(e) The prosecutor*

If the bringing of charges against lawbreakers is understood as opening up the machinery of criminal justice then the police, with whom that decision rests, can be considered to be gatekeepers to the criminal justice system. The Crown Prosecution Service (established by the Prosecution of Offences Act 1985) can further be considered as secondary gatekeepers. They are authorised to review cases assembled by the police and to discontinue them at any time until the commencement of the trial should they deem it necessary. More particularly, s3(2)(e) of the Prosecution of Offences Act allows prosecutors to advise police forces whenever they see fit and s23(4) enables them to discontinue before cases are passed over to the magistrates.

Prosecutorial review is (optimistically) intended as a check upon the temptation for officers to cut corners and bend rules in their dealings with vulnerable lawbreakers. As already indicated, the thrust of the trouble that prosecutors can bring upon police officers is concerned with the exclusion of evidence. Examinations of cases which reveal flaws in the gathering of evidence, particularly where the Codes of Practice in relation to vulnerable

suspects (and explained above) are breached will usually render that evidence inadmissible. In the absence of any significant corroborative evidence this may lead to the collapse of the case with the potential and consequential loss of face to the prosecutors and to the rest of the criminal justice system for which officers become responsible. The review process, therefore, places limits on the police doing of moral justice by other than legal means.

Decisions on whether to charge the lawbreakers that police officers have defined as mentally disordered is always accompanied by some degree of risk that the officers will get into trouble by incurring the disapproval of crown prosecutors. Charges are only brought, in theory, in those cases in which evidential standards are satisfied and any relevant policy considerations have been taken into account. In practice this means that charges must be brought against the punishable and the excusable, the deserving and the undeserving alike. While officers may well have no wish to see the excusable punished they may equally well have no desire to put themselves at risk of trouble by letting them get away with it, that is, by not bringing charges (and the difficulties attendant upon 'inaction' have been explained above). Yet when officers do charge in order that the punishable do not get away with it, it is not impossible that crown prosecutors will find that prosecution of the accused does not lie in the public interest. This may be as much on the grounds that to prosecute is economically unattractive as it is that the mental health of the disordered is likely to be further impaired in the course of criminal proceedings. Although prosecutorial policy holds no presumption against the prosecution of lawbreakers who have been diagnosed as suffering from some form of mental disorder there is, nevertheless and as stated in the Introduction to this thesis, some acknowledgement of the need to keep such people out of the criminal justice system where possible. Therefore, consultation is a means by which officers can avoid trouble.

The advice that prosecutors give to police officers should be founded on the twin criteria of evidential sufficiency and public interest contained in the Code for Crown Prosecutors (1994). Both of these must be satisfied before a positive decision to embark on criminal proceedings is taken. The former applies an objective test of whether there is a realistic prospect of conviction which, as Ashworth and Fionda (1994:896) point out,

places a considerable burden on prosecutors in requiring them to reach objective determinations based on how an impartial jury or bench properly directed should react...

Satisfaction of the evidential sufficiency criteria is followed by a determination as to the satisfaction of the requirement that prosecution is in the public interest and, as noted above, significant mental ill health is but one among other factors such as offence gravity or use of



violence that prosecutors must take into account in their decisions for and against continuance.

So, police/prosecutorial consultation offers the police a means by which they are able to minimise their risk of getting it wrong in relation to the charging of mentally disordered lawbreakers. Awareness of prosecutorial opinion as to the likelihood of criminal proceedings being pursued avoids mistakes on the part of police officers. Moreover, at such an early stage in the criminal process the prosecutors are 'largely reliant on statements assembled and notes appended by the police' (Ashworth and Fionda, 1994:896). Consultation is useful in providing officers with the opportunity to paint the pictures that cast their subjects in the most favourable or unfavourable light.

## CONCLUSION

This chapter has sought to develop the concept of getting into trouble, a concept which posits that adverse consequences will befall officers should they get it wrong in their dealings with extra-ordinarily behaved lawbreakers. Getting it wrong has so far been explained not in terms of what officers do or not do with such lawbreakers. Trouble does not arise simply because officers have, for example, taken people to the police station under arrest rather than under the mental health legislation; or called a social worker rather than a parent to be an 'appropriate adult'; or not consulted with the prosecutors. Trouble arises when there is a failure on the part of officers to successfully justify to colleagues, to superiors, to the criminal justice system, to the public, these courses of action or inaction according to a known rule and ultimately to a legal rule.

The adverse consequences which can follow upon getting it wrong are not arranged within police procedures in some form of tariff. Indeed, this thesis has not attempted to be overly specific in linking the exact nature of the 'penalties' that officers face to particular 'wrongs'. It suffices for the present purpose to state no more than that these consequences or penalties vary through the informal and formal censure of colleagues or others among the police, the criminal justice system and the public, and through civil and criminal proceedings. More important than the penalties themselves is the way in which they are incurred. Officers get into trouble because what they have done or not done fails to accord with a known rule. And in making arrests, bringing charges, calling for medical assessments and so on officers become responsible for the consequences of their actions (or inactions). In adhering to the 'legal form' and to known rules officers keep out of trouble. Furthermore,

and crucial to the analysis of the empirical data in Part II, if officers can shift to or share responsibility for what they have done or not done with others then trouble is similarly avoided. A brief example will suffice for the present. Officers call upon police surgeons to assess whether vulnerable suspects are fit to be detained and fit to be interviewed. Certification of fitness represents an assumption of responsibility. Should suspects later prove to be unfit and should the validity of their evidence be questioned then it is not officers but doctors who are responsible for the problem. Officers have acted in accordance with and can justify their actions with reference to the 'legal form'. The notion of responsibility will be elaborated upon in Part II.

Getting into trouble was introduced in this chapter as a counterpoint to the concept of getting away with it that was developed in Chapter 2. In this concluding part it has become possible to understand more fully how the two operate in relation to each other. In other words, it has become possible to understand the process by which police officers come to define extra-ordinarily behaved lawbreakers as mentally disordered. It has already been explained that police officers class such lawbreakers as punishable or excusable and that the classification is dependent upon the type of people that they are or that they appear to be. Lawbreakers are defined as mentally disordered, then, not because their behaviour is 'objectively' disordered but because to be defined as mentally disordered is to bring about particular effects. The status of 'mentally disordered' and its treatment can be stigmatising and coercive. However, that same status can also represent an absence of criminal responsibility and treatment can be minimally interventionist in nature. Therefore, and quite simply, those who are punishable deserve to suffer the pains that mental disorder has to offer and those who are excusable deserve to reap its benefits (and some do not deserve to be mentally disordered at all since it can offer nothing that is sufficiently punitive given all of the circumstances). Mental disorder can further be utilised to incapacitate on the grounds of treatability those 'personality disordered' and persistent lawbreakers whom the criminal justice system has little in the way of long-term and compulsory detention to offer. Those whom the police want to be rid of range from the dangerous lawbreakers who are involved in the types of serious crimes described in Chapter 2 to the persistently troublesome and low level lawbreakers described earlier in this chapter. Justice rests on police officers ensuring that all of these people get what they deserve. But, as this chapter has emphasised, just deserts are tempered by self-interest. Police officers do not secure just deserts at any personal cost.

Attempting to ensure that lawbreakers get what they deserve creates the risk that

police officers will get into trouble. The problems attendant upon taking no action in respect of the excusable have already been explained above. Conversely, keeping out of trouble creates the risk that lawbreakers will not get what they deserve. The problems attendant upon criminalising the excusable and medicalising the undeserving have also been explained earlier. The crucial point that is to be made here and which justifies this measure of repetition of issues already discussed is that in averting the one risk that is intolerable another is created. The latter is minimised and justice is (as far as it is possible) achieved through those informal rules and practices which officers use to get the job done.

Part I of this thesis has theorised the defining of extra-ordinarily behaved lawbreakers as mentally disordered by police officers as a process of the getting or doing of justice. Part II realises this abstract process through the analysis of the empirical data and describes how officers get justice done. In order to do so, Part II must therefore accomplish the following:

- (i) identify and examine the behaviours that are 'extra-ordinary' in all of the circumstances of the lawbreaking.
- (ii) identify and examine the 'situational' factors (such as class or gender) which determine the punishability and the excusability of lawbreakers.
- (iii) identify and examine the 'situational' factors (such as risk and danger to themselves and to others) which determine lawbreakers' deservedness and undeservedness of mental disorder.
- (iv) identify and examine the ways in which police officers (attempt to) avert the risk that lawbreakers will or will not get away with it.
- (v) identify and examine the ways that police officers (attempt to) avert the risk that they will get into trouble.
- (vi) identify and examine the ways in which police officers (attempt to) get the job of moral justice done.
- (vii) identify and examine the ways in which police officers (attempt to) deal with failures to get the job of moral justice done.

However, while the theoretical perspectives utilised so far in Part I form a coherent thesis, they do not constitute a fully coherent framework within which the empirical data can be analysed. It is possible to create such a framework by drawing upon one aspect of the doing of justice which has consistently featured throughout this chapter and has been implicit

throughout the first part of the thesis as a whole.

Police officers are part of an organisation and that organisation is best described as a bureaucracy. All that has been said so far on the subject of rules and rule usage describes the operation of a bureaucracy, constrained and regulated as it is by legal and organisational rules and practices. The police organisation, furthermore, represents objectivity and uniformity. Organisational justice relies upon the classification of like with like and the treating of like as like. Police officers have to transform the grey and the indeterminate into black and white. Shadings of behaviour provide evidence of lawbreakers' punishability or excusability and one rule or another must be invoked to do one thing or another with one kind of person or another. There is no room for arbitrariness within the machinery of a bureaucracy. Yet in talking of the doing of justice this thesis has described the exercise by officers of a more individualised form of moral justice that their organisation would ostensibly deny. Police officers engage in a measure of creativity in order to secure the moral justice that people deserve and that rests on extra-legal foundations. However, the resolution of this apparent paradox and its application to the analysis of the empirical data is the task to be undertaken through a more detailed examination of the bureaucracy in Part II of this thesis.

## **PART TWO**

## **CHAPTER 4**

### **Mental Disorder And The Getting Of Just Deserts**

#### **INTRODUCTION**

The task that is to be undertaken in the introductory part of this chapter is one of arranging the theoretical concepts which have emerged in the course of Part I into a cohesive framework in order that the empirical data be analysed. These concepts, loosely gathered under the descriptive umbrella of 'getting justice done', have been separately presented in earlier chapters as being concerned with the avoidance of the risk of lawbreakers 'getting away with it' (Chapter 2) and with the avoidance of the risk of police officers 'getting it wrong' (Chapter 1) and 'getting into trouble' (Chapter 3). The fragmentation of the process by which officers come to define lawbreakers who behave in extra-ordinary ways as mentally disordered into what appear to be its component parts is a structural device which has facilitated the development of the thesis so far. The exigencies of the presentation of the analysis of the empirical data in this part of the thesis similarly require the artificial divorce of these same concepts. However, it is crucial that the definitional process be seen as a coherent whole and not as a series of processes which lie in some kind of fixed linear progression one from the other. Officers do not first of all determine the punishability and excusability of lawbreakers; then go on to determine their deservedness (or otherwise) of mental disorder; and then proceed to treat these lawbreakers as mentally disordered according to the dictates of some utilitarian best interests approach which will keep officers themselves out of trouble.

To determine the ways in which the police understand mental disorder requires that a discourse of mental disorder be established which draws upon the notion of the police as a professional and bureaucratic organisation. In the course of previous chapters various discourses of mental disorder have emerged, albeit not in their entirety since it is no part of this thesis to interrogate the scientific approaches to the understanding and treatment of behavioural disorders. So far, this thesis has been concerned primarily with three dominant and contemporary discourses of mental disorder, namely, the medical, the organisational (as theorised from a symbolic interactionist perspective) and the juridical.

Medical explanations of behavioural disorders hold them to be symptomatic of any one or more of a multiplicity of physiological conditions, the locus of these either being the brain itself or in a site directly affecting the brain.

Organisational explanations of behavioural disorders hold them to be a product of social interaction. Mental disorder is not some objectively recognisable medical condition but a name that is given to behaviour that breaches the residual rules which are supposed to govern everyday life (see Chapter 2).

Juridical understandings of behavioural disorders are couched in terms of the extent to which they may evidence an impaired capacity to reason, to act voluntarily and to will one's actions.

It is clear that the three discourses adopt diverse approaches to mental disorder and are concerned with its diverse aspects. Medical interest is predominantly in the cause and remedy of the disturbed behaviour. Organisational interest lies in the social processes from which mental disorder is constructed and as it is affected by notions, *inter alia*, of class and gender and race. Juridical interest lies not in the causes and cures of mental disorder but in how its behavioural manifestations impinge upon criminal responsibility. What all of these three hold in common is that their attention is drawn in the first instance to people whose behaviour is unexpected and out of the ordinary.

Previous chapters have (to some degree or other) drawn upon these three discourses yet none can take full account of the particular circumstances in which police officers come to define extra-ordinarily behaved lawbreakers as mentally disordered. The sociological symbolic interactionist perspective on mental disorder remains inadequate, primarily because it carries an arbitrariness in its approach which implies that deviant behaviour is only deviant because people label it so (Becker, 1963) and that everything and nothing could therefore attract such a label (see Chapter 1). Thus there is a failure to take full account of factors of class and gender and of systemicities of risk (all of which were discussed in some detail in Chapters 2 and 3). While police officers are required to do something with the extra-ordinarily behaved, since they are members of neither the legal or the medical professions they are empowered to bring about neither legal or medical effects (see Chapter 2). Rather it is the case that when officers define behaviour as mentally disordered they do so in their capacity as officials of a professional and bureaucratic organisation, the purpose of which can be best described as the maintenance of law and order and the prevention and investigation of crime. Their definitions of mental disorder serve these ends and, as explained in earlier chapters, are both symbolic (in that the status of mental disorder denotes a moral innocence) and functional (in that mental disorder brings about beneficial, punitive or incapacitating effects by way of treatment). The model, therefore, through which a police understanding of mental disorder can be analysed is a (professional and bureaucratic)

organisational model.

According to Weber (1948(1991ed):196), bureaucratic authority is constituted as follows

I. There is the principle of fixed and official jurisdictional areas, which are generally ordered by rules, that is, by laws or administrative regulations.

1. The regular activities required for the purposes of the bureaucratically governed structure are distributed in a fixed way as official duties.

2. The authority to give the commands required for the discharge of these duties is distributed in a stable way and is strictly delimited by rules concerning the coercive means, physical, sacerdotal, or otherwise, which may be placed at the disposal of officials.

3. Methodical provision is made for the regular and continuous fulfilment of these duties and for the execution of the corresponding rights; only persons who have the generally regulated qualifications to serve are employed.

Therefore, when police officers carry out their duties they are subject to and regulated by the formal rules of law and by the formal and informal rules of their organisation. Whenever moral justice is done it must accord with and be justified with reference to a rule known to members of the organisation and ultimately with reference to a legal rule (see Chapter 3). Further,

The principles of office hierarchy and of levels of graded authority mean a firmly ordered system of super- and subordination in which there is supervision of the lower offices by the higher ones (Weber,1948(1991ed): 197).

To go beyond the rules and to step outside one's office to (attempt to) ensure that lawbreakers get what they deserve in the way of punishment, incapacitation or treatment is to risk getting into trouble with others of the organisation. Moreover (and as stated at the conclusion of Chapter 3), upon initial examination, the formalised setting and structured workings of the bureaucratic organisation of the police appear to impede officers' doing of moral justice.

Bureaucratization offers above all the optimum possibility for carrying through the principle of specializing administrative functions according to purely objective considerations....The 'objective' discharge of business primarily means a discharge of business according to *calculable rules* and 'without regard for persons' (Weber,1948(1991ed):215).

As became apparent in the course of the first part of this thesis, 'objectivity' and a disinterested following of the rules is the enemy of officers' achieving moral justice.

For the field of administrative activity proper....one is accustomed to claiming the freedom and paramountcy of individual circumstances. General norms are held to play primarily a negative



role as barriers to the official's positive and 'creative' activity, which should never be regulated (Weber,1948(1991ed):220)

Moral justice as it has been described so far does have regard for the respectable or disreputable circumstances of persons (explained in Chapter 2) which render them excusable or punishable, as deserving or undeserving of mental disorder. The possibility of individualised justice which mitigates the severity and inflexibility of the formal and organisational rules is apparently afforded to police officers by way of discretion (see Chapter 3). However,

this 'freely' creative administration.... does not constitute a realm of *free*, arbitrary action, of mercy, and of *personally* motivated favour and valuation....The rule and the rational estimation of 'objective' purposes, as well as devotion to them, always exist as a norm of conduct...in principle a system of rationally debatable reasons stands behind every act of bureaucratic administration, that is, either subsumption under norms or a weighing of ends and means (Weber,1948 (1991ed):220).

Therefore, individualised justice for lawbreakers is only individualised insofar as it is exercised according to the norms of the organisation. Officers construct the symbolic moral categories of 'punishable' and 'excusable' and order extra-ordinarily behaved lawbreakers into them according to 'police norms' (as discussed in Part I). They further construct the functional categories of 'deservedness or undeservedness of disorder' and order the punishable and the excusable into them according to the weighing of ends and means of securing 'just deserts'. Doing something with extra-ordinarily behaved lawbreakers is done according to the weighing of ends and means of 'getting into trouble' (see Chapter 3 and further in Chapter 5). The moral justice exercised by the police is a justice that is peculiar to the police and which is, moreover, produced and reproduced with the organisation itself.

The management of the office follows general rules, which are more or less stable, more or less exhaustive, and which can be learned. Knowledge of these rules represents a special technical learning which the officials possess (Weber,1948(1991ed):198).

Individual performances are allocated to functionaries who have specialized training and who by constant practice learn more and more (Weber,1948(1991ed):215).

It is the doing of justice as it is concerned with the process by which lawbreakers become deserving of mental disorder that occupies this chapter. The formal and informal courses of action that officers take in respect of lawbreakers (as discussed in Chapter 3) will be set more explicitly within the bureaucratic framework of analysis and will comprise the subject matter of Chapter 5. The present chapter sets out to investigate three areas which are

fundamental to the understanding of the process by which police define lawbreakers as mentally disordered. The task is

- (i) to determine the kinds of behaviours that lawbreakers engage in and that officers perceive to be extra-ordinary.
- (ii) to determine the factors which officers take to be indicative of lawbreakers' punishability and excusability.
- (iii) to determine the factors by which officers assess lawbreakers' deservedness or undeservedness of mental disorder.

Before embarking upon the analysis it is necessary to further contextualise (i) - (iii) above within the professional and bureaucratic framework. This is achieved by setting the organisation itself within the project of modernity.

According to Weber (1948(1991ed):215) the modern bureaucracy is a mechanism of rationalisation:

Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs - these are raised to the optimum point in the strictly bureaucratic administration.

The bureaucracy, therefore, is devoted to the production and reproduction of a state of 'order'.

Among the multitude of impossible tasks that modernity set itself and that made modernity what it is, the task of order....stands out.(Bauman,1991:4).

The categorisation of lawbreakers into types known to and understood by police officers is a process that is driven by the same compulsion to 'order' that creates and justifies the bureaucracy. The concept of 'order' utilised here is derived from Bauman's (1991:7) proposition that the

other of order is not another order; chaos is the only alternative. The other of order is the miasma of the indeterminate and unpredictable. The other is the uncertainty, that source and archetype of all fear.

Further, he states that the

tropes of the 'other of order' are: undefinability, incoherence, incongruity, incompatibility,

illogicality, irrationality, ambiguity, confusion, undesirability, ambivalence (1991:7).

This concept of 'order' needs to be explained further and in more concrete terms so that it can be more explicitly linked to the process by which officers come to define lawbreakers as mentally disordered. This can be achieved through a brief review of discussions in earlier chapters.

Behaviour that comes to be defined by officers as mentally disordered is initially perceived as rule-breaking, as an exception to the rule. Because such behaviour is 'illogical, irrational, ambiguous' it gives rise to 'confusion and ambivalence' among police officers. It disrupts the course of everyday life and causes problems for officers who, until they can give the behaviour a meaning, find it difficult to move the situation on by taking the appropriate action (or inaction). Such 'ambiguity' must be resolved so that officers know what their next move is to be, what next to say and to do. Situational rules provide the mechanism for the resolution of this 'ambiguity'.

[E]veryday life is dominated by the pragmatic motive, recipe knowledge limited to pragmatic competence in routine performances (Berger and Luckmann, 1966:56).

Instances of extra-ordinary behaviour, therefore, which amount to minor disruptions of the usual course of policing may be dealt with by, for example, denial or avoidance or normalisation. In other words, a pretence that 'nothing unusual happened' (Goffman, 1967(a); Scheff, 1966 and see Chapter 1). More intrusive disruptions which cannot be ignored compel officers to do something with the extra-ordinarily behaved lawbreaker (see Chapter 3). The wherewithal to do the appropriate something is crucially dependent upon the classification that is given to the behaviour and here the 'social stock of knowledge further supplies....the typificatory schemes of everyday life' (Berger and Luckmann, 1966:58). It is not necessary that officers have previously experienced mental disorder, either in themselves or in others. As stated above, behaviours are 'ordered' into categories, according to catalogues of typifications. Every officer knows, to a greater or a lesser and more generalised degree, the symptomatology of intoxication by drink or by drugs, of schizophrenia, of depression, of mental handicap. Every officer knows the type of people who are most likely to exhibit such symptoms. 'Mental disorder' is but one of a number of broad groupings of deviance (which include, inter alia, 'immoral', 'criminal', 'intoxicated') into which extra-ordinary behaviour is allocated and by which it is made sense of.

Police practices by which officers make sense of the 'ambiguous' are reflective of the professional and bureaucratic organisational practices which seek to impose order upon all that which falls within its administrative remit. These in turn are reflective of the practices of modernisation which seek to create a world, according to scientific and rational principles, where

'one knows how to go on'...in which one knows how to calculate the probability of an event and how to increase or decrease that probability; a world in which links between certain situations and the effectivity of certain actions remain by and large constant, so that one can rely on past successes as guides to future ones (Bauman,1991:1-2).

'Knowing how to go on' in terms of police work can be expressed in terms of police commonsense or recipe knowledge and working or recipe rules (see Chapter 3).

The social stock of knowledge differentiates reality by degrees of familiarity. It provides complex and detailed information concerning those sectors of everyday life with which [the police] most frequently deal. It provides much more general and imprecise information on remoter sectors (Berger and Luckmann,1966:57).

Officers store and utilise only as much information from those remoter sectors that possess some expertise in the area of the 'abnormal' (for example, medicine, psychology, social work) as is necessary to enable them to do their job. Thus, officers may adopt some or other of the terminologies of disorder (for example, psychopath, depressive and so on) in order to express their loose understanding of its symptomatology, its causes and effects. But 'reality' is predominantly to be found in their occupational or recipe knowledge, that which has been consolidated through the actual policing of those who engage in deviant behaviour. In the course of their work, officers observe and record these behaviours and monitor those who are most likely to be guilty of their commission. Police commonsense is consequently embodied in the documentation of their organisation (for example, custody records, files prepared for the prosecution, training manuals and so on) and in the traditions and common wisdom of the police station.

Embodied in police commonsense is the knowledge of the kinds of behaviours which constitute moral guilt and moral innocence, thereby creating lawbreakers as punishable and excusable (see Chapter 2). As Foucault (1977:178-9) states

[w]hat is specific to the disciplinary penalty is non-observance, that which does not measure up to the rule, that departs from it. The whole indefinite domain of the non-conforming is punishable....

The corollary is that conformity to the rules renders people as morally innocent and thereby excusable. The rules in question are those which constitute a moral code as understood by the police and which underpins a system of moral justice which is engineered and sustained by police officers. It is this code and its application to the extra-ordinarily behaved lawbreaker that forms the subject-matter of this chapter.

**(i) Normal and Abnormal Lawbreakers**

The mentally disordered offender is apparently a somewhat singular and unusual member of the offending population moving through the police stations that were visited in the course of the fieldwork. Almost without exception police officers were emphatic that the numbers of offenders whom they dealt with who were mentally disordered was 'very, very few', 'very, very small' and, if expressed as a proportion of the offending population dealt with by the police, not more than one or two percent.

Before proceeding further, the following points need to be made:

- (1) The symbolic interactionist theoretical perspective of this thesis precludes testing the validity of this estimate. To achieve such a result would necessitate postulating that mental disorder itself is a fact, a 'thing' waiting to be recognised by those capable of doing so and excluded from police officers' estimates only by reason of their wilful or unintended failure to recognise the symptoms of mental disturbance. Moreover,
- (2) given the various methods for dealing with extra-ordinarily behaved lawbreakers open to police officers and which do not become a matter of official record (for example, returning them to their place of residence, invoking the assistance of their family and/or doctor), it is a matter of impossibility to determine the numbers of people who are dealt with by police officers on the basis that they are mentally disordered. Equally, it is impossible to assess the numbers of those who, at the time of their involvement with the police, may experience impaired mental health and yet be defined as 'normal' only to go on through the criminal justice system and be diagnosed as mentally disordered. However,
- (3) the question asked of and answered by officers was concerned only with the numbers of mentally disordered *offenders* dealt with, as distinct from the numbers of mentally

disordered *people* dealt with. Yet it will become apparent in the course of Part II of the thesis that the extra-ordinarily behaved lawbreaker is a somewhat more common occurrence than the mentally disordered offender.

It is from the ways in which officers talk about lawbreakers who are and who are not the norm that the following headings are drawn and which form the structure of this chapter.

Normal Villains

Normal Patients

Vexatious Lawbreakers

Victimised Lawbreakers

Vulnerable Lawbreakers

The groupings described by these terms are organised to take account of the stated purposes of this chapter (above). These are to investigate the issues of 'extra-ordinariness' (i.e. making sense of behaviour); of punishability and excusability (i.e. the symbolic effect of mental disorder); and of deservedness and undeservedness of mental disorder (i.e. the functional effect of mental disorder). It has further been stated that these are not separate processes which follow one upon the other but constitute part of a whole. So a perception by officers that lawbreakers' behaviour is extra-ordinary is not inexorably followed by an assessment of their excusability and then their deservedness of mental disorder. Rather it may be that officers determine that a lawbreaker deserves to be disordered and perceptions of extra-ordinariness and excusability are constructed around that deservedness. What is significant of extra-ordinariness, excusability and deservedness, therefore, will depend upon the particular circumstances, the 'contextual relativities' of the situation.

The groupings listed above into which this chapter organises lawbreakers have been devised to take account of Goffman's (1967(a):140-142) assertion that empathy alone fails as a distinguishing factor between a psychotic and a non-psychotic situational impropriety (i.e. extra-ordinary and ordinary behaviour). The analysis of the empirical data is based on the premise that police use empathy to make sense of lawbreakers' behaviour. However, the analysis combines empathy with the more utilitarian approach adopted by police officers (developed in Part I) which holds that lawbreakers deserve to be mentally disordered

(i) because they deserve the effects of mental disorder and

(ii) because it is in the interests that officers and their organisation have in the maintenance of law and order and in fighting and investigating crime for lawbreakers to be mentally disordered.

It must be noted that 'normal villains' and 'normal patients' represent lawbreakers who behave in ways that officers have come to take for granted. The normalisation of their behaviour, however, is not to be understood as officers incorporating the 'mad' and the 'bad' within the sphere of the 'normal'. Instead officers incorporate abnormal behaviours into the categories of 'normal villains' or 'normal patients', the people who routinely figure in day to day police work as typical of their class. 'Vexatious', 'victimised' and 'vulnerable' lawbreakers, as will be seen, are lawbreakers who are not typical of either class or who are not treated by officers as a matter of routine.

## **I. NORMAL VILLAINS**

In common with the majority of people in society, police officers go about their daily business holding to the presumption that, unless evidence is furnished to the contrary, those whom they encounter are of sound mental health. In common with the judiciary, they further hold to the presumption that those whom they encounter in the course of their duties are sane in the sense that those who break the law are criminally responsible for their actions. Evidence in rebuttal of what is common and legal sense is initially to be found in the behaviours which breach the rules not of the criminal law but of the face-to-face encounter, of what is expected and taken for granted about people and the way that they can and do behave in particular circumstances. The 'normal villain' of this chapter is not a bundle of behaviours and characteristics and qualities that is assembled into a whole to constitute and represent a yardstick against which all lawbreakers, and therefore all extraordinarily behaved lawbreakers, can be judged. Police talk about mentally disordered offenders is permeated by the word 'normal' as if there were some or other person that could be proffered as its representative. The incidences of occurrence of a concept of 'normality' in police discourse (and the diverse usage of the terminology of normality will emerge in the course of what follows) belies the notion that officers could offer some coherent picture of normality. In fact, everyday 'normal villainy' is comprised of disparate behaviours regulated by disparate social rules, the nature of these rules being known only in their breach. The

'normal villain' is to be found by determining that which officers claim as out of the ordinary and unexpected behaviours and as an infringement of the 'contextual relativities' that were explained in Chapter 1.

According to Giddens (1976:122),

[c]ommunication of meaning in interaction involves the use of interpretive schemes by means of which sense is *made* by participants of what each says and does. The application of such cognitive schemes within a framework of mutual knowledge depends upon and draws from a 'cognitive order' which is shared by a community; but while drawing upon such a cognitive order the application of interpretive schemes at the same time *reconstitutes* that order.

When addressing the issue of how they come to recognise that a person is suffering from a mental disorder, officers repeatedly claim that their skill is grounded not in any specialist knowledge but in commonsense and in personal experience. Such claims give rise to two issues.

Firstly, in defining disorder, officers bring to bear a particular commonsense derived from their training and the nature of their work. It is in the course of these that officers are exposed to and so must define and deal with a whole array of unusual behaviours, some of which they will normalise as typical of one or another kind of lawbreaker. Secondly, their experience is derived from the circumstances peculiar to their dealings with all kinds of lawbreakers where one party (the police officer) is in a position of authority over the other (the lawbreaker). Consequently, the rules which regulate their encounter differ in some significant respects to those of 'everyday' interactions (see Chapter 1 and below).

Therefore, extra-ordinary behaviour which may ultimately be expressed in terms of mental disorder must be

- (1) that which departs from what police officers expect and
- (2) that which police officers do not or cannot normalise into any other deviant or non-deviant category.

The process of normalisation is a part of the (continuing) socialisation of officers into the organisational world of policing.

### **(i) Shaping Expectations of Normality**

#### *(a) Formal training: by the book*

The inductive training of probationary constables takes place in both force and regional



training centres, officers attending for an initial period of 3 months. The period is divided by their allocation to a police division under the tutelage of a supervisory officer and advised where necessary by colleagues. Further formal training for both probationary constables and for all other officers (for example, interview training courses) takes place progressively throughout their careers.

Police officers are instructed in the business of police work on the implicit assumption that the mental health of those that they encounter will not be at issue. The rules that empower police officers to take particular courses of action upon diagnosis of mental disorder are explicitly stated in the relevant training literature and guidelines. So there is an explanation of s136 of the Mental Health Act 1983 in the training manual for probationary officers. The provisions for the summoning of a doctor and/or the appropriate adult under the Police and Criminal Justice Act 1984 and the Codes of Practice are dealt with in 'A Guide to Interviewing' and 'The Interviewer's Rule Book', these forming the basis for the interview training course undertaken by the majority of officers.

However, the symptoms which may be indicative of a disordered state of mind emerge almost by a process of elimination. Mental disorder is the category that is available when others have failed (for example, Scheff, 1966). So, for example, under the heading 'Illness in the Street' in the probationer's guidelines is advice intended to assist inexperienced officers in resolving the definitional problems that arise when people behave in an inappropriate manner in a public place. The use of s136 of the Mental Health Act 1983 is suggested where the person 'appears' to be mentally ill but this suggestion is without further illustration of any symptomatology. However, this instruction follows immediately upon a relatively lengthy review of the 'Signs and Symptoms of Drunkenness' (which mimic many of the symptoms of mental disorder such as slurred speech and disorderly dress) and instructions on how to deal with those who have otherwise been taken ill in the street (such as checking for information on medical conditions such as epilepsy and diabetes carried in the form of SOS cards, bracelets and so on). This process of elimination, the operation of a checklist which focuses on the more readily ascertainable of causes, surfaces in officers' accounts of diagnosing disorder.

I was walking the town at about 2 a.m. and there was a woman who was crying. She was distressed, she didn't know her own name and address, she wasn't steady on her feet. When I got close to her there was no smell of alcohol, I couldn't see any pupil dilation so I treated her as mentally disordered. (Police Constable: City Station: Respondent No. 18)

Moreover, in the absence of any other immediate explanation, to treat a person in such circumstances as mentally disordered is to adopt a course of action that almost invariably results in a medical assessment. This tends to avert the risk of misidentification by the officer of one kind of abnormal behaviour for another and so averts the risk of his getting into trouble (as discussed in Chapter 3).

Officers denied that any input on the subject of mentally disordered offenders was delivered directly by members of mental health related professions during periods of training. (However, prior to appointment as probationary constables, cadet entrants do undertake short attachments which involve them working with people suffering from physical or mental disability, for example, in residential homes for the handicapped). Where there is other than police input into training it is indirect and takes the form of some involvement in the preparation of training material, particularly in relation to interviewing. Gaps in officers' knowledge of the kinds of behaviour that may be indicative of a disturbed mental state are filled by training officers in the centres and by tutor constables and colleagues on the division.

*(b) Practical training: seeing and doing*

The subject matter of mental disorder is addressed on a somewhat ad hoc basis. One probationary constable claimed that he was aware of more than just the law on mental disorder because he seemed to recall that an officer at the training centre had had some interest in the mentally ill. The following explanation by a tutor constable reflects the experiences recalled by a significant number of officers.

If you did not deal with anyone who was mentally disordered then there was no-one to advise you on the spot. I've tutored PC's and you walk around the town but if you don't have, for example, a theft from a motor vehicle all you can do is give them outlines on how to deal with it. The same applies to mental disorder. (Custody Officer: City Station: Respondent No.33)

Consequently, teachings come from officers' own resources of knowledge. These tutors are drawn from the rank and file (and in terms of initiating or socialising probationers into the realities of policing this could hardly be otherwise) and are taught to be teachers by those who possess identical origins. This perpetual reproduction of knowledge about what constitutes 'sanity' and 'madness' results in the consolidation of characteristics typical of each. Attempts are made to differentiate one from the other - the usual from the unusual.

There was a videoed exercise. You had someone who was wandering around. You identified them as mentally disordered and then you had to deal with someone who was normal on the

street.(Detective Constable: City Station: Respondent No.21)

Mental disorder in this case is distinguished from that myriad of other explanations of misbehaviour in public places (not least of which is drunkenness).

The behaviour exhibited by the officer who adopts the role of the mentally disordered person focuses on those key features which are taken to exemplify madness and which are typified in commonsense. The implicit 'otherness' of people who 'wander around' rather than stride out purposively about their daily business as do normal people is contrasted with more explicit signals of abnormality. In quite literally playing the part of the madman,

he was just not with it at all, acting quite irrationally, in a world of his own. He couldn't understand what you were saying.(Woman Police Constable: Rural Station: Respondent No.41)

Before proceeding, some points must be made.

1. The picture of the 'normal villain' that police officers describe would posit one who behaves rationally. The case is rather that villains' behaviour is rationalised by those officers. This will be addressed below.
2. The picture of the mad person that officers describe is of one unable to communicate on a most fundamental level. The case is rather that villains' failure to communicate is similarly rationalised. This will be addressed below.
3. The emphasis on the difference between the normal and the abnormal is permeated by a sense of unease and even danger that difference engenders. The language used by officers echoes that of Bauman (1991:7 cited above) in that it lays emphasis on the irrationality and illogicality and incongruity of behaviour.

Moreover, it is this non-particularised threat of 'getting it wrong' that is offered by the extraordinarily behaved (as discussed in Chapter 1) that emerges in anecdotal accounts which comprise a large part of on the job training.

*(c) On the job training: telling it as it is*

Police lore is an important source of training material on mental disorder that is drawn on by officers. Supplementing the more formal presentations above, the sum of all this knowledge is that from which the working rules of policing are derived. Moreover, socialisation

through police lore is ongoing. More formal teachings are summarised thus,

The sort of advice we had was to be wary of the mentally disordered, that they are volatile and unpredictable.(Detective Constable:Rural Station:Respondent No.36)

The thematic 'dangerousness of difference' pervades anecdotes that form a part of the folk lore of police stations. These are anecdotes which are not necessarily open to verification (by officers or by this researcher) at source and in which the descriptions of the symptoms of madness have been mediated through an unknown number of officers. The theme is evident in the language which emphatically distances normal criminal behaviour from abnormal criminal behaviour; which emphasises senselessness and locates those who engage in it at the opposite end of the spectrum from the 'normal'.

A person came along to the police station with a great big spade, smashed all the windows, went to the foyer and smashed the windows through there. He was taken off to the hospital but he wasn't charged.(Detective Constable:City Station:Respondent No.30)

Leaving aside any discussion of the actions of the medical practitioner and the absence of any formal action (these issues will be dealt with in Chapter 5), the following anecdote compounds unease by playing upon the fact that such a person is at liberty and beyond the apparent control of any authority.

I heard of a man who was absolutely raving. He said he'd put petrol bombs in the station. He was loopy and the police surgeon refused to section him. In the end they had to release him.(Custody Officer:City Station: Respondent No.49)

Fictional characters that embody a sort of lavish madness, an overabundance of all of the qualities that the mad may possess, are employed as a descriptive shorthand.

The other officer knew him...apparently he was a 'Jekyll and Hyde.(Woman Police Constable:City Station:Respondent No.19)

Mental disorder as it emerges from police talk is one of excess and one of danger. Mental disorder lies in an excess of deviant behaviour which distinguishes some lawbreakers from a police clientele whose very condition of membership is dependent upon their involvement in some form of deviant behaviour. However, examining police talk in order to discover the means by which officers differentiate the normal from the abnormal villain is not intended to nor can it offer any one or more behaviours that would invariably call forth a diagnosis of

mental disorder.

The notion of excessiveness, of 'more', may be most suitably expressed in terms of an excess of rulebreaking. Further, this rulebreaking may be gathered under two general headings. While mental disorder may lie in a breach of social rules, in the commission of what Goffman (1967(a):138) refers to as 'situational improprieties', it may also lie in a breach of the rules of 'normal villainy'. 'Normal villains' break rules and clearly not only those of the substantive criminal law (as will be discussed below). Officers seek to draw distinctions between the rulebreaking of the villainous and that of the mentally disordered on the basis that the former engage in a sufficiency of rulebreaking. The rule of thumb may well be that villainy is enough, madness is more than enough. What constitutes more than enough is known to officers because the reflexive nature of social interaction allows them to empathise, to step into the shoes of the other, to 'become' a 'normal villain' (or, as below, a 'normal patient' and so on) by drawing upon their known characteristics and consequently to anticipate their responses.

## **(ii) Excesses of Rulebreaking**

### *(a) Public mis-behaviours*

What is, in the language of symbolic interactionism, a situational impropriety is, in the language of the police officer, a

socially offensive habit.  
(Custody Officer:City Station:Respondent No.23)

Offenders against social rules may engage in improper public behaviour. One instance frequently given in example is that of appearing naked in public places which epitomises for officers a breach of all convention.

Other 'habits' are constituted in terms of people's inability to exercise control over their bodies and/or their speech when in the presence of others.

People who are mentally disordered tend to be more verbal, louder, more physical in their reactions (than normal people).(Police Constable:Rural Station:Respondent No.39)

They are gibbering....dancing all over the place.  
(Custody Officer:City Station:Respondent No.51)

He was shaking and talking nonsense, some of the things he was saying were gibberish.(Woman Police Constable:City Station:Respondent No.19)

However, it is clear that all of these behaviours could be attributed to some or other cause that does not have its origins in disturbed mental health. As indicated above, police officers are taught that there are a variety of physical or drug and alcohol induced states that manifest themselves in physical form. These kinds of explanations are convincing not only because there is often good and persuasive evidence (for example, identifying documentation, smell of alcohol, medical or other history which is a matter of police record) but also because those suffering from intoxicated states are a matter of routine.

Alcohol is a factor in a significant proportion of situations described by officers. This may be where drunkenness itself is the primary issue (for example, 'drunk and disorderly') or where parties to other kinds of lawbreaking are found to be intoxicated. Most officers perceive the incidence of intoxication by illegal drugs (various in nature) to be substantial and increasing. As is the case with alcohol, this is whether drug taking was the problem itself or ancillary to another type of crime (for example, theft). In fact, one custody officer working in a city station estimated that the percentage of incidents that he dealt with where drugs were a factor was over 50%. Thus precedent dictates that if intoxication has been responsible for odd behaviour on past occasions it may well be responsible in the present case and in those in the future.

*(b) Communicative mis-understandings*

The indicator most overwhelmingly declared by officers as symbolic of mental disorder was that of communicative difficulty.

You find they struggle with understanding what you're saying, not in the legal capacity but as a general thing.(Detective Constable:City Station:Respondent No.26)

Mis-understandings are therefore of a most fundamental nature and the fact that a suspect does not fully comprehend the formal language of policing (for example, the caution) is not to be taken as anything out of the ordinary (see further in Chapter 5). These disruptions in communication must, therefore, undermine 'properties of discourse' under which parties are entitled 'to claim that what they are saying is understandable and ought to be understood' (Garfinkel, 1967:42).

They do not converse with you on a normal level in as much as they either go off at a tangent, don't hear what's being said, they misinterpret what's being said and give you a totally different answer.(Woman Detective Sergeant:City Station:Respondent No.25)

Implicit in this series of rule infractions given by officers is that their antithesis be taken as indicative of examples of those rules which structure 'normal' conversations. People are expected to hear what the other has said, to stick to the point and to make an appropriate response that carries the conversation forward. However, in the context of police work, there is nothing special about these communicative disruptions that would render them essentially indicative of mental disorder. Communicative understandings or working agreements are established between officers and others on the basis of what is known by the one about the other (knowledge that comes from a number of sources such as previous encounters, appearance, manner and so on - see Chapter 1). Such working agreements are characterised by the unequal relationship of the two parties in that the officer holds a position of authority over the lawbreaker and, in order to deal with a situation effectively, will exert that authority. Since the authority of one involves the subjugation of the other, officers ideally expect acknowledgement of their authority by lawbreakers in the form of deference and co-operation. However, to secure their ends, officers must anticipate and be prepared to counter different forms of response. Drawing upon what they know to be characteristic of the 'normal villain' means that officers are equally expectant of resistance in some form. Particular information is sought in accordance with the rules of police procedure (that is, the Police and Criminal Evidence Act 1984) while under compulsory detention in a police station from people who may well be reluctant to give it. This is especially the case where the information is self-incriminatory and where the consequences of such revelations may be disadvantageous (for example, the continued detention, charge and prosecution of lawbreakers and so on). Conversations to which police officers are party, then, take the atypical for granted. Where expectations are confounded and the routine explanations fail then the behaviour is extra-ordinary. This is most effectively exemplified in the two particular ways that resistance commonly makes itself apparent, those being through silence and through violence.

With reference to the interview,

Silence is common.

(Detective Sergeant:Rural Station:Respondent No.43)

Again, in the course of the interview,

You come across people who combat questioning with such aggressive replies..and verbal

attacks on you..they are quite intimidating.(Detective Sergeant:City Station: Respondent No.29)

In describing mentally disordered people that they deal with, officers repeat an identical symptomology.

They've either been extremely violent or extremely passive.  
(Detective Sergeant:City Station:Respondent No.29)

Erratic behaviour, violence and then looking at the other extreme, silence, they're withdrawn.(Detective Constable:Rural Station:Respondent No.35)

Deference and co-operation are expected from those who are respectful of authority and the failure to co-operate is symbolic of resistance to it. Police officers claim to know from their experience that

Most no comment interviews, except where they are hardened criminals that you are interviewing, are because the solicitor has told his client to say nothing.(Detective Sergeant:City Station:Respondent No.20)

Resistance to authority is not seen to be limited to the refusal to take a part in the conversation. Rather it extends to the exercise of the entitlement to free legal advice during the course of detention. Legal advisers are perceived not as a counterbalance in an interview between police and lawbreakers which is weighted in favour of the police securing the information that they wish to hear (see further in Chapter 5). Seeking legal advice is perceived as a refusal to give the co-operation that would make the task of officers and the position of lawbreakers a great deal easier. On the basis of the officers' experience the operative rule is that a moral (but not necessarily a criminal) guilt attaches to those who refuse to submit to authority. Resistance is consequently characteristic of punishability. Conversely, morally (and not inevitably legally) innocent lawbreakers speak because they have nothing to hide. Co-operation is consequently characteristic of excusability. At the same time officers do recognise that the danger of self-incrimination lies in co-operation and this is further discussed in the context of 'vulnerable lawbreakers' below.

You find that these type of interviews are most common where the suspect is guilty and knows the law.(Detective Constable:City Station:Respondent No.27)

That a person is well versed in the law implies previous exposure to it in some or other



criminal context. Moral guilt then becomes synonymous with criminal guilt. Where people are unknown to officers, have not had the benefit of legal advice and yet elect to remain silent (that is, whose resistance does not make sense), their behaviour is extra-ordinary.

Finally, police officers expect to be lied to and employ techniques to assist them in uncovering falsehoods (which will be discussed in relation to 'normal patients' below). Those who lie too much and to no useful purpose do not settle easily into 'normal villainy'.

It might be such as an odd explanation which doesn't make any sense. There might not be any signs [i.e.physical signs] that they are mentally disordered but the story that they are telling is beyond lies.(Detective Sergeant:City Station:Respondent No.20)

### *(c) Violent mis-understandings*

Police officers take it for granted that resistance to the exercise of their authority may, on occasion, be violent in nature.

As police officers we quickly accept violence and aggressiveness when we take the job...it becomes normal. (Detective Constable:City Station:Respondent No.26)

As the explanations for non-communication are to be found by stepping into the shoes of the villain, so this empathy is extended in the face of aggressive responses. Violence becomes normal not only by the repetition of its occurrence and consequently officers' repeated exposure to it. It is also normal because it is a sensible response in the context of particular situations.

There's a difference between the criminally violent and somebody who is behaving violently for no specific purpose. Somebody can be criminally violent because he's committing a theft or a robbery and maybe because he's escaping.(Detective Sergeant:City Station:Respondent No.29)

Once its purpose is served, for example, when an arrest has been effected; or when an escape is no longer possible; or when a revolt against authority has been offered, the everyday violence of 'normal villains' ceases in the face of reason. However, in the absence of the other standard explanations of drugs and alcohol, prolonged violence to no apparent end and for which officers can suggest no motive, is often significant of irrationality. Medical assistance was summoned by a custody officer on the basis that a man involved in a driving offence exhibited

Something more than ordinary aggression...he just wouldn't calm down, wouldn't listen to

reason.(Custody Officer:City Station:Respondent No.45)

The rules by which police officers determine the limits of normal non-co-operation in the course of the interview are founded upon motive. While violent resistance intended to cause harm may be employed by the lumpen masses of the villainous population, it is also employed as a strategic tactic in sophisticated game-playing.

There are always very experienced high calibre criminals...they are not threatening you personally, their violence is a planned response. They are not going to physically attack you, they know how far they can go. (Detective Sergeant:City Station:Respondent No.29)

'Criminal' violence is both out of control and under control. Where it is the wrong sort of violence, where the rules of resistance are violated and to no apparent avail a doctor may be called to help make sense of the situation.

Initially there was no problem with him during the interview but then he blew up and completely lost his temper...this was really unexpected, it came out of the blue.(Detective Constable:City Station:Respondent No.26)

Treating the suspect as mentally disordered restores the equilibrium to an event where behaviour, confusing because it cannot be rationalised as 'normal villainy', overturns the working agreement that the officer understood to prevail.

#### *(d) Criminal mis-behaviours*

Situational improprieties arise in the context of the criminal activity that forms a routine part of police work. In the same way that an excess of social rulebreaking is extra-ordinary, indications that all is not as usual may emanate from an excess of villainy.

All crimes are not identical in the finer details of their commission. However, routinisation of particular crimes through dealing with them on a regular basis means that officers come to experience variations and to incorporate them into the taken for granted. This is apparent in the following account.

Every crime is different. Take your normal standard burglary. Obviously if I go to a burglary I'm going to expect either 1, 2, 3, 4, 5, 6, or 7...I go to one and it's number 8 then there's something not quite right....If it's an untidy search of the house then that's standard burglar. If for some reason every window in the house was smashed or there was something peculiar about it then it would lead you to think that there was something a little more to it....would make you think the person who's done this is not quite right.(Detective Constable:Rural Station:Respondent No.44)

Numbers one to seven constitute 'the 'seen but unnoticed' background features of everyday scenes' (Garfinkel,1967:36). A disruption of these features causes pause for consideration and officers must then attempt to rationalise it within a known category. Standard burglary encompasses a number of variations and (if number eight is sensible) can always be extended to include one more. However, 'mental disorder' is only one of the available solutions to the problem. The nature of 'not quite right' can only be known if and when the lawbreaker is apprehended. Albeit that officers seem disposed to adopt a logic that would dictate that mental disorder can be discerned in the traces of a person's behaviour, it is a logic of unending circularity since it would hold that if madness is known in the deed then the person who has done the deed is mad. 'Not quite right' is more likely to be resolved, particularly when the perpetrator is caught, by some other 'normal villainous' explanation (for example, the person held a grudge, or was drugged and consequently out of control). That the lawbreaker is mentally disordered may be the explanation of last resort.

However, in the case of normal patients, madness is the explanation of first resort.

## **II. NORMAL PATIENTS**

A dominant theme which recurrently surfaces in police talk about mentally disordered offenders (the substance of which was discussed in Chapter 2) is that for lawbreakers to receive a clinical diagnosis of mental disorder is to secure some kind of benefit. However, and as will become clear throughout this section of the chapter, when officers talk about getting away with it they are talking about one particular kind of lawbreaker and that is one who fulfils all of the criteria of 'normal villainy'.

The opinion expressed by a detective constable on the subject of offenders diagnosed as mentally disordered within prisons appreciates the consequences that may befall the unwary professionals who do not exercise sufficient vigilance against being tricked by these unscrupulous offenders. These prisoners

are out to gain attention. A lot of them are normal when they go in but they think that they can get special treatment if they pretend to be mentally disordered. (Detective Constable:City Station:Respondent No.26)

By implication, the diagnosis of mental disorder has been achieved through the duping of those in authority by prisoners who, in mimicking the symptoms of madness, are adept enough to raise doubts as to their sanity. Further, and by implication, such people are potentially dangerous to police officers themselves. For, as Goffman (1959(1990ed.):66-7)

asserts, the more closely the imposter's performance

approximates to the real thing, the more intensely we may be threatened, for a competent performance by someone who proves to be an imposter may weaken in our minds the moral connection between legitimate authorization to play a part and the capacity to play it.

The 'imposter' is perfectly illustrated in a female officer's account of a shoplifter.

We had a general call, all normal, routine. He was brought back to the station and he was a normal, everyday shoplifter. I was getting ready to interview him when I got a call from the CO saying that the man had previously taken a bottle of tablets. He hadn't taken any this time but he told the CO that once before he had taken a whole bottle of tablets. He had been depressed for years. He said he had blackouts. He was charged with theft. He pleaded not guilty and he was acquitted because of his illness. (Woman Police Constable: City Station: Respondent No.19)

Leaving aside the issue of whether the grounds for acquittal are indeed as the officer supposes them to be, that the officer believed the man to be acquitted on account of his mental disorder becomes a part of her stock of knowledge about 'normal villains' and 'normal patients' (and of that of officers to whom she recounts her experiences). Precedent dictates that on each occasion that officers are deceived, so they treat the same type of lawbreakers in the future with an increased wariness. It is in this way that suspicion becomes compounded and hardens into the police persona. Furthermore, suspicion creates no-win situations for imposters when the facts of their disorder become apparent. Those who appear to be 'normal villains' (and thereby induce officers to enter a working agreement with them on that basis) are often presumed to be seeking self-advantage by subsequently revealing that they are mentally disordered. 'Normal villains' who wait for such evidence to emerge are then presumed to be concealing such information in order to achieve some kind of tactical advantage akin to the form of ambush defence frowned upon during the course of a trial.

However, the notion that people who offend against the criminal law will not hesitate to manipulate and deceive authority rests upon a series of assumptions which do not inevitably hold good. So, mental disorder is presented by officers as equating to a benefit for lawbreakers. The benefit lies in the state of moral innocence that mental disorder confers and/or the avoidance of punishment. That lawbreakers would wish to avail themselves of 'mental disorder' rests on the assumption that they appreciate its benefits to such an extent that they are prepared to play the part of the mad. This police commonsense must be interrogated since not only does it appear to attribute a capacity for dramaturgical skill and for rational forward planning to the lawbreaking population which is more than the majority

of it can bear but, in so doing, it also subverts notions of trust.

### **(i) Differentiating the Properly and Improperly Mad**

Police officers maintain their guard against deception by operating what amounts to 'systematic distrust' (Rock, 1973:76). In other words, the general rule is to take people on mistrust until they furnish evidence to the contrary. Mistrust entails a process of constant double-checking. Therefore, officers

may divide what they witness into two parts: a part that is relatively easy for the individual to manipulate at will, being chiefly his verbal assertions, and a part in regard to which he seems to have little concern or control, being chiefly derived from the expressions he gives off. The others may then use what are considered to be the ungovernable aspects of his expressive behaviour as a check upon the validity of what is conveyed by the governable aspects. (Goffman(1959(1990ed):18)

Lawbreakers become caught in a cleft stick of mistrust. Where police officers presume that extra-ordinary behaviour is contrived and intended to deceive, they look to some aspect which is 'ungovernable' to supply confirmatory evidence of that deceit. That which is beyond lawbreakers' control must produce a creditable display of proving the truth of their 'governable' assertions. Where the extra-ordinary behaviour is sufficiently out of the ordinary to suggest the symptoms of madness, officers may embark on a search not for confirmatory evidence that lawbreakers are mentally disordered but rather that they are not. Therefore, behaviour symbolic of madness must appear as overwhelmingly non-contrived otherwise officers may fail to be convinced of lawbreakers' true social identities (Goffman,1963:2). Lawbreakers who succeed in convincing officers are those who constitute the category 'normal patients'.

Unfortunately the best evidence of madness is the best evidence to tamper with (Goffman,1970;59). Recurrent in police talk is the notion that anyone can be mad if it suits them to be. Should lawbreakers give off too subtle expressions these may well pass unnoticed. Should the signs resemble those excessive behaviours described above by officers as indicative of disorder, to which cannot be attributed to any other explanation, then, paradoxically, they may well be rationalised as indicative of sanity. Officers know that to play at being mad is to draw upon a stock of symbolic behaviours which everybody knows. Anticipating the likely responses of the would-be mad resonates with training procedures and police lore where similar expressive behaviours were acted out and recounted (see above). Too much behaviour, therefore, can be equally indicative of sanity as it is of insanity. A detective constable dismissed as futile such transparent attempts to feign

disorder.

There are a particular amount of people that regularly re-offend and re-appear. Having been through the system they can quite easily manipulate the system to suit their ends and this aggressive behaviour, this business of curling up in a corner in a ball and that sort of stuff, there are people who would try to use that to make their stay with us a little less than they have to. (Detective Constable:City Station:Respondent No.22)

The deep suspicion that officers appear to feel with regard to some lawbreakers must be further examined.

### **(ii) The Benefits of Patient Status**

It has been repeatedly stated that a police definition of mental disorder can and does bring about symbolic and functional effects. To be named as mentally disordered symbolises the morally innocent status that the morally innocent lawbreaker deserves. To be named as mentally disordered can bring about the psychiatric treatment that the (not necessarily morally innocent) lawbreaker deserves. It is where lawbreakers deserve neither of these that they are seen by police officers to get away with it. The advantage that is to be secured through a successful pretence to mental disorder is specified by officers as 'getting off with it'. Advantage takes two forms. To cast lawbreakers into the sick role is to relieve them of responsibility for their condition and of behaviours which may result from it (see Chapter 2). In the words of one woman officer,

The reason for [his] behaviour was that [he] was mentally disordered. It's no good for people to get a criminal record because it's something that they need help for.(Woman Police Constable:City Station:Respondent No.19)

Officers, therefore, set lawbreaking and the blame for it beyond the control of the person and locate it firmly in the mental disorder.

The other form of advantage is that therapeutic treatment by way of 'appropriate care' is suggested by officers to be somehow 'better' than modes of punitive disposal.

The priority for the genuinely mentally disordered should be to get them out of the police station and into appropriate care. If they are severely mentally disordered, no further action should be taken.(Detective Sergeant:City Station:Respondent No.29)

The benefit, however, appears to lie rather more in the innocent status that is conferred than in the actual disposal itself. The 'getting away with it' principle, which acts as justification for the application by officers of the rule of mistrust, rests on rationales whose accuracy is

borne out neither in psychiatric sentencing practice (which will be discussed in Chapter 5) nor in police knowledges about mental disorder and its effects.

For all that officers advocate, on the one hand, the therapeutic consequences of mental disorder as conferring a benefit, they nevertheless acknowledge, on the other, that it may be sufficiently detrimental in its nature so as to render it unattractive to suspects who are not unversed in the area of psychiatric treatment.

People do deceive the doctor sometimes. When they are examined by the doctor then they act normal...sometimes they might be reluctant to answer the doctor's questions because they want to help themselves. I mean, they don't want to be mentally disordered. They want to be treated as normal. Maybe this is because they have been in treatment before and they didn't like it.(Custody Officer:City Station:respondent No.45)

To be treated as normal means to be treated as a 'normal villain'. The determinate punishment that the criminal justice system has to offer may be seen by lawbreakers (and their legal advisers) to be a positive advantage when weighed beside the potential dangers attendant upon arousing psychiatric interest with its indeterminacy of treatment (see Chapter 3).

Officers further recognise that treatment has the potential for incapacitation. In spite of expressions of sympathy for the plight of those who suffer the pains of mental ill health and whose behaviour may be beyond their immediate control, a detective constable acknowledges that officers must bow to commonsense.

You can't have someone who is violent and who commits violent offences at large.(Detective Constable:City Station:Respondent No.30)

Implicit within this statement is the knowledge that if treatment is to control the uncontrollable then it must apply techniques of physical (and/or chemical) restraint in conditions which are not so very different from those which exist in penal institutions. In such cases, therefore, officers reconcile this dichotomy between treatment as a 'good thing' and treatment as a 'bad thing'. It is here that the distinction between mental disorder in terms of its symbolic effect and in terms of its functional effect is important.

Explicated at some length in Chapter 2 was the emotive influence exercised over the criminal justice process by the doctrine that people who may be held to be morally responsible for their deeds should be duly punished while people who may be held to be morally innocent should not (Ross,1975). Nor is moral justice done if the punishment or treatment does not appropriately reflect lawbreakers' morally guilty or innocent status. But

officers have to be realistic. Where the morally innocent pose a danger to themselves or others, officers are well aware that their compulsory hospital treatment will not be far removed in its nature from punishment. The more coercive the treatment, the more officers present it as a necessary evil and the more the talk turns to the welfare and best interests of lawbreakers who are suffering. After all, as officers point out, treatment does take place in hospital and it is administered by doctors, all of which imparts to it a somewhat spurious humanitarianism. In distancing themselves from the reality of treatment (see further on this in Chapter 5), officers are assisted by the fact that they rarely know what becomes of people once they leave the police station.

You never know what's happened to them, you never get told. I can find out if I want to but the courts don't have to inform us. (Custody Officer: City Station: Respondent No.46)

Having once determined that lawbreakers are morally guilty, it then becomes difficult to convince officers otherwise. For undeserving lawbreakers to re-present themselves as deserving is to demand that one set of assumptions made by officers be substituted by another and officers tend to deny that any symptoms are genuine. These 'normal villains' deserve neither the symbolic nor the treatment benefits of mental disorder. But again, officers are realistic. Notwithstanding that officers mistrust the undeserving, they must nevertheless seek medical assistance where the behaviour of such lawbreakers is sufficiently extra-ordinary that it would be to risk getting into trouble to dismiss it as no more than deceit. In avoiding the risk of getting into trouble officers create the risk that the undeserving may receive some form of treatment which is less punitive than they deserve. In an attempt to resolve this dilemma and to prevent the morally guilty from getting away with it, officers engage in tactics intended to undermine the symbolic and treatment benefits of mental disorder. Yet it will become clear in Chapter 5 that it is these undeserving lawbreakers who are the least likely to secure any benefit from mental disorder at all. There are some among the morally guilty, however, who police officers are prepared to define as deserving of the incapacitation that mental disorder has to offer. The 'vexatious lawbreakers' to be discussed below become mentally disordered as a means to an end.

### **(iii) Presumptions of Insanity: The Ungovernable Evidences of Madness**

There are particular circumstances in which the police presumption that lawbreakers are sane until proved otherwise appear to be subverted. These circumstances arise where the working agreement between officers and lawbreakers proceeds on the footing that the latter



is mentally disordered. 'Normal patients' conform to police expectations of the ways in which lawbreakers referred to by officers as 'genuinely mentally disordered' can and do behave. Since the best evidence of mental disorder is to be found in the ungovernable areas which are beyond the immediate control of the person (Goffman,1959 (1990ed)), the following discussions consist of the 'ungovernable' sources of evidence which raise the presumption of mental disorder. The primary sources of this evidence come from reports of mental disorder made by others; the settings in which the lawbreaker is found and any physical stigma that may be present.

*(a) Madness in public settings*

It was suggested by officers (and has been referred to above) that behaviour in public places which disturbs others and threatens the public peace is often engaged in by mentally disordered people. Mental disorder, nevertheless, can amount to an explanation of last resort where other explanations for that behaviour fail. However (and as also indicated earlier in this chapter), unlike police officers, members of the public who are witness to such behaviour are under no particular obligation to define it with any degree of accuracy. Their primary concern is rather to define it as someone else's problem, in other words as a problem that justifies their calling it to the attention of the police. Indeed, and in such circumstances, there is a dearth of alternative problem solvers. Officers, on the other hand, who possess a greater expertise in the diagnosis of the causes of behavioural abnormalities are under no obligation to confirm these public diagnoses. So

You get alerted to them by members of the public ringing up and saying 'someone is sitting in the centre of the road'...then when you attend they are far from how they are portrayed.(Detective Sergeant:City Station:respondent No.29)

Since members of the public are not invested with any real authority to impose diagnoses of mental disorder upon anyone, officers are at liberty to redefine behaviour as something else, for example as drunkenness or as physical illness of some kind. However, the police role of 'law and order maintenance' requires that situations must be dealt with in as satisfactory and as permanently 'order keeping' way as is possible. To treat lawbreakers as if they are mentally disordered is one means of achieving this end (see further below and in Chapter 5).

*(b) Madness in private settings*

Police officers expect lawbreakers to be mentally disordered when evidence is presented to them by people who are in a position to know about such matters.

One instance is where officers are called upon to deal with mental disorder as defined by the family. A number of officers at one station who had first or second hand experience of the event recounted a recent case where a 14 year old boy had locked himself in and his parents out of their home after inflicting some minor injuries upon them. He had also caused some damage to the house and furniture. The boy had a psychiatric record that was known to the officers who, along with the parents, were extremely concerned for his safety.

As Yarrow et al (in Scheff,1967:34-5) points out, the atypical becomes normalised as the behaviour of one person is adapted to by others. Application of this notion suggests that out of the ordinary behaviour is normalised by the family as being normal for that particular family member. Consequently, and as confirmed by Yarrow et al (in Scheff,1967:34-5), behaviour often must become progressively more abnormal before a family finally acknowledges that it can no longer be normalised and calls for outside assistance. It may well follow, then, that when the police are called upon to deal with people who are currently behaving in ways that their families diagnose as mentally disordered, officers more readily concur in this diagnosis on the strength of the evidence that is presented to them, particularly since the family speaks from the knowledge of experience. However, to concur in the diagnosis does not inevitably require officers to take any kind of immediate action that may result in criminalisation (such as an arrest). Unlike situations where the public expects that something be done and officers risk getting into trouble if they do not do it, disturbed and disturbing behaviour that takes place within the family can often be medicalised.

His parents obviously did not want to make charges so we used a place of safety. If it was not his parents that he'd assaulted, if it was a member of the public, then he would have been convicted.(Woman Police Constable:City Station:Respondent No.19)

Officers avoid getting into trouble because the family are willing both to downplay the gravity of the behaviour and to refuse to become victims. Further, there is no apparent risk of harm to others outside the family. The previous psychiatric history of the boy provided yet more confirmation of his mental disorder.

Normalisation of the atypical can also describe the process whereby officers who know lawbreakers to be mentally disordered normalise their behaviours into those that are typical of the 'normal patient'. As one custody officer explained,

Sometimes we know about people's mental disorder, their psychiatric history. They are regulars. We are actually quite good at assessing mental disorder from their behaviour.(Custody Officer:City Station:Respondent No.50)

Mental disorder then takes on a transparency for police officers. A sentiment expressed in police talk about 'normal patients' is that madness can be known in a glance (once someone is known to be mad). In describing the boy involved in the case outlined above, the attending officer sees what she expects to see.

When we got in he was just sitting there. You could tell he wasn't normal just by looking at him. His eyes were fixed...just staring. He looked to me like he could go off again. (Woman Police Constable:City Station:Respondent No.19)

When the 'actual social identity' (Goffman,1963:2) is established as being that of a 'normal patient', lawbreakers' behaviours are perceived to be typical of 'normal patients' and further confirm people in that identity. Violent behaviour is as typical of normal patients as passive behaviour. Moreover, officers are able to resolve any doubt or ambiguity about the meaning of such passivity by drawing upon the common stock of police knowledge about madness. This holds that outward appearances of patients may well conceal an inner turmoil and irrationality that is one of the hallmarks of mental disorder.

*(c) Madness in mad settings*

The setting in which behaviour takes place is extremely influential in giving rise to the presumption of mental disorder. 'Social settings establish the categories of persons likely to be encountered there' (Goffman,1963:2). Consequently, when officers are called to attend incidents inside places which are known to be occupied by mentally disordered people they see what they expect to see, namely mad people who do mad things.

We deal with a lot of assaults and things like that at the various social services hostels in the town. You know that everyone who's living at that address has got some kind of mental problem so you anticipate it really. (Police Constable:City Station:Respondent No.28)

The setting in which the behaviour takes place may well dictate the way in which officers choose to deal with the situation.

I have dealt with cases in the hospital [of violence and sexual offences] and you must take account of the fact that these cases have been committed in hospital and treat them differently than if they had been committed outside. (Detective Sergeant:Rural Station:Respondent No.34)

'Treating them differently' is condoned in such circumstances since to take no formal action is unlikely to get officers into trouble. As these 'dangerous' lawbreakers are already in

confinement the objective of incapacitation through formal action is already achieved. Moreover the actuality of institutionalisation further loosens the perceptions that police officers usually hold about lawbreakers and their victims. Patient lawbreakers and patient victims within the psychiatric hospital are bound together in relationships that officers perceive to be founded upon irrationality. Such relationships are thought by officers to be subject to rules that are not readily intelligible to the 'sane' outsider. 'Treating them differently', however, may be positively disadvantageous to both lawbreaker and victim alike. Mental disorder and lawbreaking are not inevitably conjoined by some causative link. Taking no formal action, therefore, does not serve the lawbreakers whose recovery and return to a state of improved mental health demands that they take responsibility for their actions. Nor does inaction afford justice to the victims who appear to enjoy a lesser entitlement to the provisions of the criminal justice process than do their counterparts outside the hospital setting.

Psychiatric diagnoses of mental disorder which are divorced from the hospital setting do not always provide officers with convincing evidence that lawbreakers are 'normal patients'. While not denying that there are lawbreakers who suffer from some kind of impaired mental health that requires treatment, such lawbreakers may not be mentally disordered enough to be categorised as 'normal patients'.

It's not necessary to treat people who are taking valium and such as mentally disordered...that's depression. (Custody Officer:City Station:Respondent No.50)

Indeed, it would not be possible for officers to state that all such people are mentally disordered. To do so would be to open the floodgates since too many 'normal villains' that they deal with on a daily basis suffer from the same kind of conditions.

However, a refusal to automatically treat lawbreakers whom officers describe as suffering from 'nerves' and 'stress' and 'breakdowns' as mentally disordered does not preclude officers calling the police surgeon to authorise the taking of prescription drugs while in detention. Nor does it preclude calling the police surgeon as a safety measure to examine anyone who claims to be or to have been medically diagnosed as suffering from 'depression'. Officers, therefore, do not deny that depression is a medical condition but they do deny that it inevitably excuses lawbreaking. 'Genuine' or 'normal patients' are those that, according to officers, are not 'like you and me'. On the other hand (and as will become increasingly apparent in the course of this chapter), lawbreakers are treated as if they were mentally disordered because in some ways they are just 'like you and me'. Stepping into the

shoes of 'normal patients' allows officers to make sense of lawbreaking in terms of the patients' mental disorder. But empathy does not accommodate notions that officers could ever find themselves as 'normal patients' and that they too could engage in such lawbreaking. Yet depressive illness in all the forms that officers describe it is the sort of thing that may well affect 'you and me' and, as one officer points out, occurs

As strains and stresses of today's life come along...stresses in the home as well.(Detective Constable:Rural Station:Respondent No.36)

The frequency with which officers encounter depressive illness among 'normal villains' makes it unacceptable that all lawbreakers who suffer from it should deserve the effects of mental disorder. Depressive illness is too normal. However, a seeming paradox emerges in that officers are equally often prepared to treat people who suffer from 'depression' and 'nerves' and 'stress' as if they were mentally disordered.

There is a fine line between depression and mental disorder.(Custody Officer:City Station:Respondent No.46)

The way in which such states of mental ill health provide officers with a means to an end will be discussed in relation to 'vexatious', 'victimised' and 'vulnerable' lawbreakers below.

*(d) Madness on the face of it*

Of all evidence that is least amenable to be tampered with and which officers claim to be overwhelmingly indicative of mental disorder is that to be found among the 'stigma symbols' (Goffman,1963:43) which are socially recognised as signifying an 'other than normal' state. These signs provide information that immediately discredits people for being different (Goffman,1963) and yet immediately identifies them as being 'normal patients' in that such signs epitomise all that officers expect from the truly mentally disordered. Disordered minds are often considered by officers to manifest themselves in disordered dress. Mental disorder may be signified by

Uncoordinated dress, you know, if it was a tie not on right and you've got one red sock and one yellow sock and this sort of thing.(Police Constable:Rural Station: Respondent No.39)

However, appearances can be deceptive and imposters are not uncommon. Officers cannot afford to overlook the threat posed (if only to their face which is undermined when they fall into the trap of misreading the situation) by those who unwittingly foster appearances that

are discrepant with reality (Goffman,1959(1990ed.):66). Diagnoses of mental disorder are made when evidence unfolds which renders the taken for granted equation between appearance and reality untenable. So, for example, a custody officer attempts to reconcile an apparently 'normal' appearance with an apparently 'abnormal' reality. A man whose 'personal front' (of attire, of demeanour, of place of residence) consists of the symbols of 'normality' is

Arrested under the Public Order Act because he writes all these things on pieces of paper like 'next door is a prossie' and puts it in his window. He comes in and he seems perfectly natural. So you tell him his rights and you ask if he wants anyone informing and he says 'I'd like to telephone my sister'. So you start to ask the details and he says 'that's Mrs So and So, such and such an address and telephone number, Queensland, Australia'. (Custody Officer:City Station:Respondent No.33)

The man was subsequently re-classified by officers as no longer a police problem but as one belonging to the police surgeon.

Officers consider as the best evidence of mental disorder the more fixed and immutable of stigma. So, they correctly assume that physical disorders are often associated with and therefore significant of mental disorder.

Quite often people who have mental disorders or mental handicap have a disability which inhibits their ability to move about.(Woman Detective Sergeant:City Station: Respondent No.25)

Physical disorder may be made known, for example, in

Involuntary movement of the limbs and facial expressions. (Police Constable: Rural Station: Respondent No.39)

Officers equally correctly do not assume that all those who possess some physical disorder are also beset by a mental disorder.

Their physical features are such that they would suggest that there was something wrong with them, for instance, wheelchair bound. I'm not saying that everybody in a wheelchair is mentally disordered but wheelchair bound, the way they walk, the way they hold themselves, their physique.(Detective Constable: City Station: Respondent No.22)

Since physical stigma may be as significant of a normal mind as an abnormal one, officers look for confirmation of mental disorder in such places as psychiatric histories. However, there is always the risk to the physically marked that the undesirable characteristics associated with mental disorder may be mistakenly attributed to them.

The imputation of characteristics supposedly typical of mental disorder is particularly apparent in police talk about the criminal expertise of 'normal patients'.

I certainly don't think they commit burglary or theft because they don't have the capacity to think out the crime.(Detective Constable:Rural Station:Respondent No.44)

On the other hand,

Occasionally you see mentally disordered people who are brought in for shoplifting.(Detective Constable:Rural Station:Respondent No.35)

But this shoplifting is not the routine event described by the female officer (above) but rather shoplifting in its most opportunistic and ill-executed forms which virtually guarantees the apprehension of the lawbreaker.

*(e) Typically mad offences*

Mental disorder is known to officers as irrationality and unreason, as compromising free will and self-control. Lawbreaking is taken to epitomise such states where it validates police commonsense about the impulsivity and the absence of restraint that are hallmarks of mental disorder. Mental disorder is employed to make sense of behaviour that would otherwise be senseless. So, the offence of burglary is stated by officers to involve some forethought and the intellectual wherewithal to convert plans into actions (a belief at odds with the expressed opinion of most officers which may be summarised as 'most offenders are stupid'). 'Normal patients' are deemed capable only of crimes that are ill-thought out and ill-conceived. Such crimes may involve behaviours which take them out of the sphere of normal, everyday criminal activity. In addition to disorderly behaviour in public places and to instances of criminal damage which were inevitably cited by officers as crimes of the disordered,

Their sort of crime usually involves injury or harm to another person.(Custody Officer:Rural Station:Respondent No.40)

My experience has been drawn largely from dealing with offences committed in the hospital so I would say that a lot of these involve violence and you also get a lot of sexual offences.(Detective Constable:Rural Station: Respondent No.35)

The perceived inability of mentally disordered lawbreakers to maintain control of the body through the strength of the mind is assumed by officers to manifest itself not only in violent responses but also in abnormal sexual behaviours. However, one officer did recognise that

the symptoms of mental disorder do not always conform to expectations while simultaneously abrogating responsibility for its detection.

But you have to remember that there is always the psychopath who has planning ability...but you would never be able to identify these people because they are too cunning.(Detective Constable:Rural Station:Respondent No.44)

The 'normal patients' that figure in police commonsense are violent and passive, withdrawn and excitable, witless and cunning. Being 'genuinely' mentally disordered, their condition and the lawbreaking that results from it lies in the 'ungovernable', outside their control.

In acknowledging the danger that surrounds madness which appears as a facsimile of sanity, the officer assigns the responsibility for such artifice to the 'psychopaths'. Abrogation of responsibility for recognising 'dangerous' people merely shifts the burden of doing so onto others in the further criminal justice system. It is these others who must then risk getting into trouble if it is later discovered that mentally disordered lawbreakers have been treated as if they were 'normal villains'. This shifting of responsibility by officers onto someone else is inevitable but misplaced. Officers may justifiably claim to be bound by the limitations of what they can know about the more complex of clinical conditions. But officers are yet more deeply caught up in a process whereby the stereotypifications which are confirmed in their encounters with 'normal patients' feed back into their stock of knowledge of madness, reproducing and reinforcing the already-known. The more sophisticated the behaviour, the more the likelihood that it is normalised into that which is expected of 'normal villains'. Thus it is not merely the 'psychopath' who escapes detection but also those whose state of mental health may be somewhat precarious or other than the norm but whose behaviours are too subtle or too close to 'normal villainy' to be extraordinary. This is particularly true for those who suffer from the less serious conditions of mental illness and the milder forms of mental handicap yet whose state of health may render them vulnerable during the period of detention (and this will be further discussed in Chapter 5).

### **III. VEXATIOUS LAWBREAKERS**

The term 'vexatious lawbreakers' describes the persistent, chronic, low-level lawbreakers whose behaviour represents a high nuisance value to police officers. According to one officer,



The real problems are the down and outs, the ones who choose drink. They are a nuisance but they are not really criminals so you can't arrest them. These sort of people don't help themselves. The uniforms move them on from one bench to the next. If they do go to court, they get a fine, they don't pay it, they go to prison.(Detective Constable: City Station:Respondent 22)

'Vexatious lawbreakers' are characterised by their deviant behaviours, the nature of which can lead them to be seen by police officers (and, on occasion, doctors), on the one hand, as 'ill' or, on the other, as 'bad'. So their lawbreaking is associated with their addictions and 'depressive' states (see above in relation to 'normal patients') which emanate from drink and drugs and from social circumstances that render them ineffectual in dealing with the vicissitudes of day to day existence. An officer recounted an example of one of these chequered careers.

There was a woman who used to come into the station. She repeatedly committed crimes, she used to be involved in fights and she used to cause damage. There was also self-mutilation. She was locked up and then she was sent to court. Once the court actually sent her to hospital but usually she was more often bailed. The doctors said that nothing could be done for her, they couldn't treat her. (Detective Sergeant:City Station:Respondent No.20)

In dealing with 'vexatious lawbreakers', officers constantly face the risk of getting it wrong. According to most of the officers interviewed, lawbreakers who are at the mercy of some or other addiction or who are homeless or who experience difficulties in carrying out the functions of day to day life constitute a significant and ever increasing presence in police stations. The more frequent their appearance, the more officers take them for granted. The more, then, that these types of behaviours are incorporated into those expected of the 'normal villain'. However, appearances may be deceptive and one officer (with some previous experience in social work) did recognise that

People suffering from hypo or hyper glycaemia can display very extreme behaviour and quite often they can be mistaken as being drunk.(Woman Detective Sergeant:City Station:Respondent No.25)

Misreading the signs of serious physical illnesses for those of self-induced and intoxicated conditions (i.e. getting it wrong) is likely to endanger the physical well being of the sufferer if medical attention is delayed. In so doing, the professional reputations of the officers involved are undermined if they should be held responsible for any harm that should befall the lawbreaker as a direct result of their getting it wrong.

As symptoms of physical illness can be interchangeable with those of intoxicants, so

the symptoms of intoxicants can be interchangeable with those of mental disorder.

The taking of drugs or alcohol can influence a person's behaviour and, I suppose, to a certain extent impair them sufficiently to make it appear that there may well be something wrong with their state of mind. (Detective Constable: Rural Station: Respondent No.43)

Misreading the signs and treating lawbreakers who are suffering from the effects of drink or drugs as suffering from a mental disorder carries with it a different kind of risk. It raises the unwelcome possibility of a morally guilty, punishable, undeserving lawbreaker (i.e. a 'normal villain') being classed as a 'normal patient' and, as a consequence, 'getting away with it'.

Not many offenders are mentally disordered. A lot appear to be mentally disordered because of their addictions. They can give the impression that they are mentally ill but they are not. (Custody Officer: City Station: Respondent No.46)

Police talk, in fact, articulates a dominant axiom of criminal justice, namely, that intoxication by drugs or drink and that poverty and its consequences are self-induced conditions and as such cannot excuse any lawbreaking. Sufferers are no more than 'normal villains'. Nevertheless, officers are not prepared to deny medical attention to those 'vexatious lawbreakers' whose behaviour is more abnormal than is usual. To do so would be to risk getting into trouble should their state of health be endangered by the absence of medical treatment. The possibility that they might succeed in getting away with it is dealt with by police officers in ways which are described in Chapter 5.

However, there are exceptions to the rule that persistently and chronically troublesome lawbreakers are 'normal villains'. It is on account of these very qualities that officers can come to see 'vexatious lawbreakers' as deserving of the functional (rather than the symbolic) effects of 'mental disorder'. Because it offers the possibility of some form of treatment, mental disorder is perceived as a therapeutic means to a 'trouble free' end. It is a commonly held belief among officers that medicine (and psychiatric medicine in particular) is capable of curing or alleviating the problems of 'drink' or 'drugs' or 'depression'. This is in spite of the fact that the underlying problems (such as poverty and unemployment) which lead to these states are not amenable to medical help. Furthermore, 'treatment' holds out the prospect of incapacitation which provides temporary respite for officers who suffer from these 'vexatious lawbreakers'.

Officers, therefore, have to justify treating lawbreakers who behave in ways that are

typical of the 'normal villain' as deserving of mental disorder. Consequently, arrest is presented not as a course of action designed to secure punishment for the deserving but as the catalyst by which the therapeutic process is set in motion.

You can't really try to get help for them unless they have done something wrong and you can arrest them. (Probationary Police Constable:City Station:Respondent No.18)

If 'vexatious lawbreakers' are to be treated as deserving of mental disorder then they must be treated as if they were mentally disordered. In other words, they must approximate to the real thing - a 'normal patient'. As discussed above, 'normal patients' are responsible neither for their states of disturbed mental health nor for the lawbreaking that results from those states. Officers, therefore, treat 'vexatious lawbreakers' as if they were sick and at the mercy of their affliction by displacing the responsibility for their lawbreaking from the actor and onto the sickness.

In the case of drug users, well, whatever they are doing, whatever the offences that they commit, it is only because they have to support their habit.(Detective Constable:City Station:Respondent No.22)

Sickness then brings with it an entitlement to be judged less harshly for behaviour that would otherwise attract condemnation (Parsons, 1970:113). Further, sickness cannot be cured by an act of will (Parsons,1970:113) and so 'vexatious lawbreakers' become entitled to professional treatment.

Drug addicts offend to feed their habit and if they can get realistic help then it solves all their problems. (Detective Sergeant:Rural Station:Respondent No.43)

The effects of drink and drugs and depression become the pegs upon which 'mental disorder' can be hung and which justify officers calling for a medical assessment which they hope will unlock the door to treatment.

However, in the same way that officers have to justify treating some among the 'vexatious' as different than 'normal villains', so they have to justify treating others of the 'vexatious' as 'normal villains'. Officers cannot treat all persistent nuisances in the same way, not least because some are not persistent enough and can be adequately dealt with through the usual sentencing provisions of the criminal justice system. Others have been helped before and have failed to respond. These people are distanced from the lawbreakers who are deserving of mental disorder. 'Genuine' sufferers are positively obligated to avail themselves

of treatment (Parsons,1970:113). Those who fail do not deserve innumerable opportunities for treatment. Failure takes various but similar forms. Some lawbreakers make no attempt to live up to their obligations.

Alcoholics repeatedly get into trouble through their illness but they usually do not want medical help. (Woman Detective Sergeant:City Station:Respondent No.25)

Some drunks are beyond help. I mean, if they go to prison there is no drink but they go back on it when they come out.(Woman Police Constable:City Station:Respondent No.19)

Neither is deservedness of mental disorder warranted where the obligations of the 'sick role' have been only partially fulfilled.

People who take drugs need help. They do get it and then they go off the trail [sic] again. Once they are in custody they get help and then they are released and then it starts again.(Custody Officer:City Station:Respondent No.17)

Nevertheless, some officers are pragmatic enough to acknowledge that treating the problem of 'vexatious lawbreakers' as mentally disordered is a remedy of desperation which is unlikely to be realised. So, for example, the detective sergeant (above) asserted that

drug addicts offend to feed their habit and if they can get realistic help then it solves all their problems. (Detective Sergeant:Rural Station:Respondent No.43)

However, he immediately went on to qualify this claim.

Having said that I don't know what the detoxification provisions are and what they involve.(Detective Sergeant:Rural Station:Respondent No.43)

Thus, 'vexatious lawbreakers' are constructed by officers as deserving of mental disorder in the hope rather than the certainty that medicine offers any real solution to the problems that such lawbreakers pose.

I think that the ones who need help are those people who have got a drink or a drugs problem. To be honest with you they are a nightmare. You see them brought into the station week in, week out. They leave on bail to attend court but supervision is difficult. Then when they go to court, the court says *we* can't do anything until this or that is done. They always need something further to be done before a hospital or a drug or alcohol rehabilitation scheme can take them.(Police Constable:Rural Station:Respondent No.42)

#### IV. VICTIMISED LAWBREAKERS

The term 'victimised lawbreakers' describes respectable lawbreakers who, as far as police officers are concerned, deserve to be mentally disordered in order that they benefit from both its symbolic and functional effects. Mental disorder symbolises the moral innocence of this type of lawbreaker and is capable of bringing about their excusal from the stigma of criminalisation and, hopefully, from the pains of punishment. As Giddens (1976:73) points out, everyday life proceeds on the basis of the equation that agency equals moral responsibility equals the context of moral justification (and indeed this equation is replicated in judicial processes described in Chapter 2). If such lawbreakers are to be exempted from responsibility for lawbreaking on account of their 'mentally disordered' condition, officers must set the responsibility for the mental disorder and for the lawbreaking beyond the control of the lawbreaker (in other words, to satisfy the criteria of the sick role (above)). Officers achieve this by constructing these lawbreakers not only as victims of circumstance (which is the source of their mental disorder) but also of the 'real' victims of their lawbreaking. Lawbreaking thereby becomes justified and 'real' victims get their just deserts.

In order to construct these lawbreakers as deserving of mental disorder officers refigure the above equation. They do so through the denial or minimisation of agency of the 'victimised' which consequently impacts upon the measure of moral responsibility that the 'victimised' bear for their lawbreaking. This lawbreaking is then explained as being morally justified. This process is one by which lawbreakers become victims, innocent casualties of day-to-day life.

On the surface, police officers would appear to identify the precipitating causes of lawbreaking by the 'victimised' as being the same as those which precipitate the lawbreaking of the 'vexatious'. The abuse or misuse of proscribed or prescribed drugs figure predominantly, as does alcohol. So, the explanation offered by one officer, in this case for persistent instances of indecent exposure, is typical of those repeated in the accounts of numerous others.

The offences always occur when he doesn't take his tablets but he takes alcohol instead.(Detective Constable:Rural Station:Respondent No.36)

Deservedness, however, does not inhere in immediate conditions which, in talk about 'vexatious lawbreakers', are presented by officers as self-induced. Rather, those same kinds of conditions are treated by officers as symptomatic of more and sustained troubles.

If people were helped with their problems, for example, if there's a breakdown in their marriage, then that might well be the cause of their drugs problem.(Detective Constable:City Station:Respondent No.30)

The possibility that a 'drugs problem' may be responsible for any marital breakdown is, of necessity, passed over. In creating 'victimised lawbreakers' officers are creating 'normal patients' and so they talk about that which is 'ungovernable' (see above in relation to 'normal patients'), about behaviour which is outside the lawbreakers' immediate control. 'Victimised lawbreakers', therefore, may emerge from inauspicious environments.

There are a lot of problems on council estates, in rough areas...their environment is sometimes so bad that people do not stand a chance.(Detective Constable:City Station:Respondent No.26)

The 'real' reason that lies behind the instances of indecent exposure described by the officer above is consequently not the taking of alcohol rather than tablets. The two are not causes but effects. Officers treat

certain external, antecedent states...as if they stand for (are identical with) the internal states, [and] so...have only to observe the external situation to 'know' what was intended, what motives were operative. (Douglas(ed),1970:13).

Therefore, indecent exposure happens because

The man is damaged, he's had breakdowns which have resulted from domestic damage. These breakdowns happen because he just can't cope with some of the stresses of everyday life, I mean, you get stresses in the home and such. You have to be sympathetic with these people. You can understand why they behave like that, you can understand their reasons. (Detective Constable:Rural Station:Respondent No.36)

Such vicissitudes as they suffer (and the 'domestic damage' was explained as a history of parental neglect and abuse) are manifested in an incapacity to adequately perform social roles and obligations. An almost inevitable consequence is an inability to maintain sobriety and sound mental health which, in turn, precipitates lawbreaking. Officers explain such states not as a self-induced eroding of free will which can be remedied by the act of pulling oneself together but rather as effects that are determined by social circumstances and events.

'Victimised lawbreakers' are lawbreakers with whom officers are able to empathise. Officers come to understand the lawbreaking as explicable and, in treating lawbreakers as mentally disordered, find the means to excuse it. (The conflation of 'mental disorder' with moral innocence and an antipathy for criminalising lawbreakers who cannot help what they

do equally prevails in the courts. As discussed in Chapter 2, the legal excusal offered by the diminished responsibility defence is often refused to seriously 'abnormal' but seriously 'guilty' offenders while granted to those lawbreakers who kill while suffering states that 'everyone understands' (such as failures of relationships; conditions of serious physical illness)).

#### **(i) Victims of Circumstance**

A certain coupling emerges in police talk which ties together lawbreaking and rulekeeping in a relationship which enhances or decreases the possibility that lawbreakers will become victims. The connection can be simply stated. The more that lawbreakers observe those commonplace social norms and moral codes that are taken for granted by officers, the less likely it is that officers will make sense of their lawbreaking in terms of 'normal villainy'. Rather, officers will attribute to it an innocent explanation. In other words (and as discussed in Chapter 2), it is respectability that is the guarantor of moral innocence and it is moral innocence that militates against 'normal villainy'. As Ball (in Douglas(ed), 1970:328) points out,

to be defined as respectable...is to be considered as a regular or normal human being; that is, as a member of that category of persons perceived as morally respectable, as other than evil, and so on.

In stepping into the shoes of 'respectable' lawbreakers, officers perceive them to be somewhat more like 'one of us' (i.e. like officers themselves whose motives are usually sensible and, at worst, negligent) than 'one of them' (i.e. like 'normal villains' whose motives are usually bad and, at best, reckless - see Chapter 2).

Respectability does not inhere in the person and, while it is more tenaciously imputed to the higher classes (Rock, 1973:88), its presence is nevertheless to be found among the working classes and the 'respectable poor'. Moreover, and as will become increasingly evident, respectability does not march hand in hand with gender and race (despite the absence of any empirical data relating to race which precludes reference being made to any specific examples). On the other hand, respectability attaches to those who successfully play the part of 'decent', 'proper' men or 'decent', 'proper' women (see below). Therefore, the more that lawbreakers conform to (or depart from) the proper observance of those roles, the more that they will be seen to be respectable (or disreputable). Moreover, respectability is further bound in a web of relations which centre upon power and purpose and moral meanings. Police officers and lawbreakers come together on an unequal footing. Therefore, it is police

officers who are in a position to select from a plethora of symbols those that they judge to signify respectability. Inextricably brought to bear on this process of selection is the impact of what Douglas (1970:18) refers to as 'deep moral meanings which serve as guides or general contexts for situational constructions'. These are not readily voiced by officers yet their presence emerges, as Douglas (1970:19) suggests, in the language of fair play and decency. Officers explain their decisions to criminalise or to medicalise lawbreakers on the grounds of feeling that one or other course of action was 'not right' (in the interests of justice) or 'only fair' (in the interests of the lawbreaker).

Symbols of respectability are often expressed through a person's espousal of societal expectations and values, in particular about the worlds of the family and employment. Respectability is about meeting the responsibilities and obligations in relation to them that are held in some esteem. Conversely, officers' accounts of 'victimised lawbreakers' are accounts about failures to meet expectations. In speaking of a man arrested in relation to an assault upon two young men,

His mother told me that he had recently been separated from his wife. He'd got no access to his kids. The CSA was involved and they had refused to acknowledge that he hadn't got access so they were demanding money. Then he was made redundant. Nothing could be worse than the situation he was in. (Custody Officer: City Station: Respondent No.50)

Again, a man arrested for criminal damage

Was unemployed and without money. He'd had more jobs and then further redundancies so he'd had to go back to the dole. But temporarily he'd got no dole money but he'd still got to support his family. He'd got a house and a mortgage to pay for. (Custody Officer: City Station: Respondent No.50)

However, respectability in these situations is maintained through histories of lawbreakers having been 'proper' and 'decent' men who have observed the rules of masculinity which are centred on 'self-confidence, independence, boldness, responsibility, competitiveness' and so on (Messerschmidt, 1986:40). Respectability is further maintained by lawbreakers' continued attempts (even if thwarted) to play the parts of 'proper' and 'decent' men. These are what Messerschmidt (1986:40) states to be concerned with 'earning money and providing material security for his family..[and] invested in men's work and occupational duties outside the parameters of the home and family'. It is when police officers talk about the 'ungovernable' circumstances of disempowerment that some distinctions emerge which suggest that lawbreaking women may more readily become 'victimised lawbreakers' than



men.

While the agency of men can be undermined by the 'ungovernables' of domesticity (of divorce and damage and stress and so on), these events were presented by officers as quite major upheavals that 'everybody' would find it difficult to weather with ease. In the accounts that were given of men and women, the disempowerment of men took place in a wider sphere, that is, in a public sphere outside the home. As in the cases above, agency was subverted and denied by 'authoritative others', by employers and bureaucrats in government departments. Such 'authoritative others' did not feature in police talk of women. Officers remained silent about any 'public' status that these women may or may not have possessed. Rather, the talk was of women at the mercy only of the 'normal' rigours experienced within the narrow confines of domesticity. Such women were the victims of their partners and children and parents who themselves were the victims of poverty and unemployment and abuse. Respectability (and the status of 'victimised lawbreaker') is more readily imputed to women who try to conduct their lives in accordance with social expectations about 'proper', 'decent' women. This involves, at the least, observing the approved codes of domesticity and in providing 'support, nurturance, and services to their husbands and children and family' (Messerschmidt, 1986:40). These women become 'victimised' when their attempts are thwarted by the very circumstances that they embrace.

You see a woman, she's got marital problems and because of these problems she's temporarily out of control. She might be violent towards her husband or she might smash up the house or anything like that. (Detective Constable: Rural Station: Respondent No.36)

This was stated by the officer to be an example of a classic situation which was typical of his past experiences and involving a typical kind of female lawbreaker. The same officer went on to recount his most recent experience in dealing with a female 'mentally disordered offender'.

The woman was undergoing out-patient treatment and she found out that her husband was having an affair. He was throwing it in her face...and over Christmas time, a particularly vulnerable time. So she just got the axe to him and a poker to the other woman. It was apparent that she was distraught so we got the doctor. (Detective Constable: Rural Station: Respondent No.36)

The disempowered women who feature in police talk engage in 'privatized resistance against their subordinate and powerless position' (Messerschmidt, 1986:44). Further, this is not limited to what Messerschmidt (1986:44) describes as the 'isolated and self-destructive

forms of 'deviance' not normally considered criminal: alcoholism, drug addiction, mental illness, and suicide'. Violence can turn outwards and be used against other people within womens' domestic surroundings.

Once a doctor has diagnosed some or other psychiatric condition, officers express approval of men and women who carry out their obligations under the 'sick role' and voluntarily, even eagerly agree to treatment. Under these circumstances no accusations can be levelled against such lawbreakers that their condition is self-induced (unlike the 'vexatious lawbreakers' described above). (Accusations are likely to come from others of the criminal justice system and the medical profession whom police officers wish to convince of the mental disorder of the 'victimised' - see Chapter 3 above and Chapter 5). A middle-aged woman who was detained in connection with an assault on her husband and with disorderly behaviour on his arrival at the local accident and emergency department was known by the custody officer to have 'smashed up' her doctor's surgery when refused a prescription some months earlier. Her acquiescence to treatment for her physical and mental conditions was emphasised by all officers involved as was her willingness to accede to their requests that she see her GP immediately upon her leaving the police station. Charges in relation to her behaviour were never contemplated.

Medicalising rather than criminalising such women not only has the effect of removing their agency, their capacity to be bad (Ussher(1991:172) but also partially masks womens' capacity for violence from official view. Moreover, when officers tell tales of 'mentally disordered' women, they almost always tell tales of unfocused, random and disorderly behaviours (see further in 'Vulnerable Lawbreakers' below). They do not tell tales of intentionality, of criminal careers (for example, of women as thieves or as prostitutes) or the capacity to execute sophisticated crimes which deserve a grudging respect. If such women feature in officers' daily business then they are 'criminal' women (Carlen,1985). If officers believe them to be deserving of mental disorder at all, then it is on account of the worst of the (punitive or incapacitating) effects that mental disorder can bring.

Police officers are reluctant to promote lawbreakers as 'victimised' if there is an aversion on the part of those lawbreakers to engage in measures of self-help. Any such aversion begins to erode moral innocence and reconstitute the person as willed and culpable. This is particularly likely where the refusal of help alienates officers (and any others of the criminal justice and medical profession) who have offered it and when the subsequent closing of the door to a medical disposal makes life increasingly difficult for officers.

We had got a lady to go to hospital on several occasions. It was not that she hadn't responded when she was sent to hospital but she would not accept treatment and the hospital decided there was nothing they could do for her. The police surgeon was aware of the lady and the decisions of the hospital so he was not prepared to call out the consultant psychiatrist if she was not going to respond and have treatment.(Custody Officer:City Station:Respondent No.47)

As a custody officer pointed out, the options then become limited.

You have to deal with them as you would anyone else. But the problem for me is whether to let them go. But there's more to it than that. If you do someone else will only be on the phone to report them. There can be some of them who are harmless but some of them are dangerous.(Custody Officer:City Station:Respondent No.46)

Lawbreakers who come to present a risk to themselves or to others on account of their recurrent and/or violent behaviour are often seen by officers as deserving of the incapacitating rather than the beneficial effects of mental disorder (that is, they become 'vexatious lawbreakers').

## **(ii) Shifting Responsibility**

As stated in the introductory part of this discussion of 'victimised lawbreakers', if respectable and morally innocent lawbreakers are to achieve the mentally disordered status that they deserve, police officers must locate the responsibility for their condition and their lawbreaking in the 'ungovernable'. The preceding discussion has been concerned with explaining the ways in which police officers explain the causes of the disturbed mental states of 'victimised lawbreakers'. What follows is concerned with the ways in which officers shift the responsibility for the lawbreaking behaviour into the control of the 'real' victims and thus out of the control of the 'victimised'.

One step towards shifting responsibility from lawbreakers to their victims is to depersonalise the 'real' victim. Officers, therefore, recount detailed stories about victim-precipitated crime which locate the lawbreakers as centre stage while remaining almost wholly silent about the 'real' victims. Such victims are cursorily referred to as the 'victim', a 'man', a 'woman' and so on. 'Real' victims recede further into the distance when officers disappear the crime. This they achieve through their renaming it as something else. An assault by an unemployed man upon two young men (see above) was not a willed and criminal action but rather 'some irrational behaviour'.

He was on prescribed drugs and he mixed them with alcohol which led to some irrational behaviour...he could not think of any reason why he did it. He actually asked us what he had done and if the boys were hurt. He agreed to voluntary attendance at the hospital and there was no charge.(Custody Officer:City Station:Respondent No.50)

Denying the crime as a crime disappears moral responsibility for its commission. The following exchange witnessed between a custody officer and a woman, whose actions had necessitated hospital treatment for her husband and resulted in her own compulsory removal from that hospital, illustrates the point.

**Woman** - 'You won't get me in jail...I done nothing wrong'  
**Custody Officer** - 'Of course not'

Behaviour which amounted to offences of assault, public disorder and criminal damage disappears. Further, in this case, the 'sick role' of the woman was re-inforced by the repeated expressions of concern for her well-being by officers and their repeated offerings of typical 'make it better' tokens - handkerchiefs, cups of tea, bars of chocolate and other kinds of food.

'Real' victims, however, cannot be made to disappear at the risk of officers getting into trouble. 'Real' victims disappear by their own explicit or implicit consent. So, officers cannot refuse to take formal action (i.e. arrest, detention and investigation) against lawbreakers in the face of the 'real' victims' wish to proceed. To do so would be to incur criticism from within the police and the criminal justice system. In the instance of the young men who were assaulted (described above), the voluntary agreement of their assailant to enter into a course of treatment (and the fact that it was a first and 'one-off' offence) was used by officers as a bargaining device in the negotiation process with the 'real' victims and the prosecutors in order to secure an informal outcome (see further on these issues in Chapter 5). The closer the relationship between the 'victimised lawbreaker' and the 'real' victim, the more likely the latter will comply with informal action since

the greater the relational distance between the parties to a dispute, the more likely is law to be used to settle the dispute (Black in Fielding, 1991:116).

This is particularly the case in domestic situations where, as discussed above in relation to 'normal patients', one family member is often less likely to demand the criminalisation of another.

Proximity of relationship between the 'real' victim and the 'victimised lawbreaker' can feature where officers construct 'real' victims as deserving of the crimes against them. Shifting the responsibility for lawbreakers' behaviour onto their victims establishes the incident as a victim-precipitated crime. 'Real' victims are given centre stage and their own

'bad' behaviour is produced as evidence that to be the victims of crime is no more than they deserve. It is further evidence that the 'victimised lawbreakers' were morally justified in doing what they did and deserve to benefit from the effects of mental disorder. For example, and to utilise a previous account -

The woman was undergoing out-patient treatment and she found out that her husband was having an affair. He was throwing it in her face...and over Christmas time, a particularly vulnerable time. So she just got the axe to him and a poker to the other woman.(Detective Constable: Rural Station:Respondent No.36)

The complexity of this and similar situations is reduced by officers to its lowest common moral denominator. The motive of the woman is self-explanatory since, in this kind of situation, 'everybody knows' who is in the moral right and who is in the moral wrong. Officers inevitably culminate their accounts of 'real' victims who get their just deserts with an appeal to this universal understanding of morality. This appeal is usually voiced as 'you can understand their reasons, can't you?'. Similarly, the story was told by more than one officer of a man who had suffered a series of redundancies which left him unable to pay his mortgage and to support his family:

So he smashed the Job Centre window. He has been charged because the damage cost £700 but you can understand his frustration. Do you say that you can't excuse him?. (Custody Officer: City Station: Respondent No.50)

As stated above, to define lawbreakers as 'victimised' does not inevitably lead to officers taking informal action. Officers cannot risk getting into trouble with 'non-compliant victims', that is, the 'Job Centre'. In this case, and given the cost of the damage, the interests of this government department lay in the charge and prosecution of the offender. Moreover (and this will be dealt with in some detail in Chapter 5), officers themselves acknowledge that the more grave the offence, the more likely they are to take formal action, thereby criminalising the 'victimised'.

Finally, in order that 'victimised lawbreakers' be diagnosed by a doctor as mentally disordered, officers must cite some or other condition which justifies their seeking a medical assessment. Again, and in a similar way to 'vexatious lawbreakers', the ill-defined yet quasi-psychiatric nature and effects of intoxication and 'stress' and 'nerves' and 'damage' suffered by the 'victimised' act as pegs upon which mental disorder can be hung. The absence of any such conditions will thwart the best of officers' intentions. This absence was particularly felt by officers in respect of the 'victimised' man who smashed the window of the Job Centre

and who could produce no 'medical' evidence of mental disorder whatsoever. Furthermore, doctors do not always diagnose 'victimised lawbreakers' as suffering from a treatable mental disorder (as discussed in Chapter 3 and further in Chapter 5). A custody officer stated the inevitable;

If they have committed an offence then, in the absence of anything else, we put them forward for prosecution.(Custody Officer:City Station:Respondent No.51)

At this juncture, it is appropriate to return to the issue of gendered distinctions and the 'victimisation' of lawbreakers. In examining the processes by which disproportionately greater numbers of women are diagnosed as mentally disordered (for example, Allen (1984); Busfield (1996)) it is appropriate to look to the processes which precede their psychiatric diagnoses as mentally disordered. Women who appear in the psychiatric statistics do not appear there because all women suffer from some essential madness. This thesis argues that mental disorder is more than just a way of making sense of extra-ordinary behaviour. Mental disorder can reward the respectable and the morally innocent and punish the disreputable and the morally guilty. Therefore, women are as likely to be mentally disordered because they are 'proper', 'decent' women as they are because they are 'bad' women. 'Mental disorder' begins in the police station. Officers find it a relatively simple matter to 'victimise' respectable women since they perceive them to be lawbreakers out of control and in the most ordinary of circumstances. Furthermore, and notwithstanding the serious nature of their offences, their often close relationship with their 'real' victims can militate against demands that they be criminalised.

## **V. VULNERABLE LAWBREAKERS**

'Vulnerable lawbreakers' are morally innocent lawbreakers who deserve to be mentally disordered in order to assert that moral innocence and in order that they be excused from the stigma and the pains of punishment. These kinds of lawbreakers comprise a relatively small group of people who are respectable by virtue of their age or their social class (or the social class that they appear to be). Police officers treat such lawbreakers as they would a vulnerable (mentally disordered) suspect according to the provisions of the Police and Criminal Evidence Act 1984 (discussed in Chapter 3 and further in Chapter 5). In so doing, officers assert the mental disorder of these 'vulnerable lawbreakers' and set the lawbreaking beyond their control.

According to Goffman (1968:2), 'social settings establish the categories of persons likely to be encountered there.' So, when people of a type who rarely appear as lawbreakers before police officers appear in police stations an explanation is sought for their extraordinary presence. Anomalies are created where expectations of 'coherence among setting, appearance and manner' (Goffman,1959(1990ed):35) are subverted by the conflicting signs given off by these lawbreakers. Appearance ('stimuli which function at the time to tell us of the performer's social status' (Goffman,1959(1990ed):34)) creates a first impression of a particular type of person.

To see him, you'd think he was just a..a normal elderly gentleman, smartly dressed, coming from a good background....which he no doubt does, well educated... (Custody Officer: City Station: Respondent No.17)

Manner ('stimuli which function at the time to warn us of the interaction role the performer will expect to play in the oncoming situation' (Goffman,1959(1990ed):35)), however, can belie impressions fostered by appearance.

This gentleman used to come down to the station. He used to come in there every night, ask for the sergeant and give him a piece of paper with details of a crime that he had committed. And he did this every night.(Custody Officer:City Station:Respondent No.17)

The discrepancy between the 'good' character imputed to people who appear to be respectable and the 'bad' behaviour normally associated with people who appear to be disreputable is explained by the officer's naming the person as 'mentally unstable'. Moreover, this is accompanied by a smile. Such 'unstable' gentlemen (and ladies) commonly feature in police talk and the tales that officers tell about them represent the lighter side of policing. Officers can safely ignore the idiosyncrasies of respectable people without the threat of getting into trouble so long as their behaviour is confined (at least for the present) within the boundaries of what is lawful and what is tolerable to others. Lawbreaking, particularly if persistent, breaches these boundaries and officers cannot continue to do nothing. Amused tolerance is displaced by coercive benevolence.

There's an old lady in the town who you'd think was from the beginning of the century. She's an educated lady but she walks around the streets with these old tattered clothes on. She's been brought in a few times [for disorderly conduct] because she's getting worse but it's only been in the past couple of weeks. She needs sectioning now.(Custody Officer:City Station:Respondent No.49)

### **(i) Protecting the 'Vulnerable'**

The dominant symbols of respectability which emerge from these descriptions are particularly those of age, appearance, speech and education. In the same way that 'discreditable' qualities and characteristics can be imputed by officers to both 'normal villains' and 'normal patients' alike (Goffman, 1963 and discussed above), so they impute 'creditable' qualities and characteristics to those whom they perceive to be distinguished as respectable. Moreover, respect is typically accorded to (or disrespect is typically withheld from) those who are deserving of it by reason of their high social status or their longevity. This combination of respect and respectability constitute people as those whom Rock (1973:88) describes as the 'least permissible targets of predatory attack'. According to one officer,

There are people who through no fault of their own end up at a police station and they end up having to be interviewed over criminal matters. (Detective Constable: City Station: Respondent No.22)

Police officers talk about these lawbreakers as if they were possessed of some innate moral innocence and draw an implicit distinction between moral and legal innocence. Such is the force exerted by 'respectability' - by these lawbreakers' adherence to standards of decency revered by officers (Reiner, 1992:118) which leads to their identification as friends rather than as enemies (Bauman, 1991), as 'one of us' and not as 'one of them' - that legal guilt does not compromise moral innocence. Furthermore, lawbreakers who are out of place in the police station are those

Who haven't encountered the police before. So you get somebody like a middle manager, a business man. I'm not saying that they haven't committed the offence, they're not necessarily innocent. (Detective Sergeant: Rural Station: Respondent No.34)

The assertion that encounters with the police are usually absent from the lives of the higher social classes must not be given its literal meaning. Rather it is the case that such encounters more usually occur in social situations where the two parties are on a somewhat more equal footing. 'Vulnerable lawbreakers' appear in police stations more usually in the capacity of victims of crimes or as fellow members of the criminal justice system.

A similar disjuncture between appearance and manner, between the expected role and the actual role, occurs where the person involved is elderly. On the one hand, '[m]ost attention is paid to the elderly as victims' (Farragher and O'Connor, 1995:269). On the other,



and borne out by one detective sergeant, shoplifting (Keller and Vedder in Farragher and O'Connor,1995:269) and the least aggressive of sexual offences are disproportionately representative of the illegalities of elderly lawbreakers (Farragher and O'Connor,1995:272).

It's not uncommon for elderly men to shoplift. You get elderly males who are being interviewed in relation to sexual matters, you know, they might do something such as offer money to young girls to run errands then try to touch them.(Detective Sergeant:Rural Station:Respondent No.34)

'Vulnerable lawbreakers' tend to be everything that 'normal villains' are not. As stated above, officers treat 'vulnerable lawbreakers' as if they were possessed of some innate moral innocence. Conversely, 'normal villains' are treated as if they were possessed of some innate moral guilt. These disreputable lawbreakers are assumed to know all of the rules of the game, that is, the investigation process which takes place within the police station. As far as police officers are concerned, respectability has the effect of disempowering lawbreakers. They are disadvantaged in the police station because, as morally innocent lawbreakers, they do not know the rules of the game. Indeed, they do not know what the game is.

I'm thinking about people who are 50 and over, well, they haven't got the same grasp of their legal rights as younger people. A lot of them see the police as the be all and end all. The result is that if the police said that they had done something wrong then they would believe that they had done something wrong. So you can call them vulnerable. (Detective Constable:City Station:Respondent No.22)

Respectability is characterised by an implicit trust in the police.

You get the middle manager, somebody who is middle class. They commit, let's say, a shoplifting offence, they won't want legal advice. They tell the truth and they are looking to get out quickly.(Detective Constable:City Station: Respondent No.26)

It is the trust that 'vulnerable lawbreakers' have in the police that puts them at a disadvantage and the risk that they run is the risk that they will not get away with it. It is because these lawbreakers trust the police that they observe the rules which more usually obtain in encounters outside the police station, that is, they tell the truth. Indeed, this is no more than officers would expect from all lawbreakers (and this issue has been discussed in Chapter 3). But if the 'vulnerable' should tell the truth then they risk convicting themselves out of their own mouths by making admissions which are difficult, if not impossible, to retract at a later stage in criminal proceedings. Officers are not prepared to get into trouble with their superiors or with others of the criminal justice system (for example, the crown prosecutors)

by assisting 'vulnerable lawbreakers' in changing their stories. What officers can (and do) do is to offer such lawbreakers the protection that is (in theory) offered to all mentally disordered suspects whose admissions would be otherwise unreliable (see Chapter 3). In treating these 'disempowered' people as if they were vulnerable suspects, officers tacitly augment the category of the mentally disordered and vulnerable suspects made explicit in the Police and Criminal Evidence Act 1984 (Code of Practice C)(and explained in Chapter 3 above). Officers, thereby, no longer face a real risk of getting into trouble merely on account of offering protection to those who need it.

The peg upon which mental disorder is hung and which justifies calling the doctor is not dissimilar to that used in relation to the 'vexatious' and the 'victimised' lawbreakers. The quasi-medical states that are loosely associated with the taking of intoxicants are taken as symptoms of some underlying and impaired mental health. As officers point out, 'everyone' suffers at some time from the 'stresses and strains of daily life'. Further, there are some people who are deemed by officers to be predisposed to impaired mental health on account of their physiology.

Sometimes you get shoplifters who you think are mentally disordered. You get middle-aged women brought in and you think, there must be something wrong with them. Why have they stolen these things when they've got pockets full of money. (Detective Sergeant:City Station:Respondent No.20)

As every officer knows that all respectable, middle-aged women are mentally disordered on account of 'menopausal problems', so every officer knows that advancing age almost certainly brings with it some deterioration in mental health.

The elderly...old people may be confused, they aren't always able to look after themselves and I don't just mean in the police station, I mean in the community as well. Some of them suffer from senile dementia.(Custody Officer:Rural Station:Respondent No.38)

Such knowledge does not merely justify officers in calling for the doctor to carry out a medical assessment. It also allows officers to make sense of the lawbreaking of a respectable and elderly person that may be otherwise inexplicable.

What officers do not tend to refer to explicitly when they talk about the risks posed to 'vulnerable lawbreakers' is the risks that 'vulnerable lawbreakers' pose to the police themselves. By the very fact of their extra-ordinary presence in the police station, this type of lawbreaker commands the attention of officers. However, their presence is unusual not merely in the police station but also in the further criminal justice system. It follows, then,

that crown prosecutors, defence lawyers and so on may well subject such lawbreakers to increased scrutiny. If admissions have been made, their time spent in the police station may be of particular interest (because of reasons shortly to be explained). Furthermore, officers cannot afford to get it wrong and treat respectable lawbreakers as if they were 'normal villains'. The apparent disadvantage that (particularly middle class) lawbreakers are under inside the police station is often in marked contrast to the advantage that they possess outside it. While they may not be aware of the rules of the game (i.e. the investigation process) while they are in the police station, they often have the wherewithal to find them out once they have left. Officers are aware that, upon leaving the police station, 'vulnerable lawbreakers' can (and do) seek advice about their treatment there (whether on their own initiative or at the suggestion of others). Officers pre-empt getting into trouble for any mismanagement of the investigation by getting it right. They do so by affording the 'vulnerable' more than sufficient protection against any potential claims that they may make about the misuse of police powers which resulted in their securing admissions of guilt (and this will be discussed in more detail in Chapter 5).

However, not all members of the higher social classes and not all of the elderly are possessed of an innate moral innocence. In order that police officers define them as 'vulnerable', lawbreakers have to observe the rules of conduct which are usually observed by the type of people that they are or that they would appear to be. As discussed above, respectable lawbreakers are treated as 'vulnerable' because officers know and expect that respectable people trust and co-operate with the police.

A lot of them see the police as the be all and end all. The result is that if the police said that they had done something wrong then they would believe that they had done something wrong. So you can call them vulnerable. (Detective Constable: City Station: Respondent No.22)

On the other hand (and as discussed earlier), officers know and expect that disreputable people mistrust and resist co-operation with the police. One of the primary means of resistance (discussed above in relation to the 'normal villain') takes place where lawbreakers avail themselves of their legal entitlement to speak only in the presence of a solicitor. This stands in opposition to the fact that officers would apparently urge lawbreakers disadvantaged by reason of their class or their age to seek the assistance of a legal adviser during the course of their detention. However, officers talk of this entitlement (and other rights such as that of lawbreakers notifying a third party of their detention) as privileges within their gift. Where lawbreakers know and exercise their legal entitlements they are

presumed by officers to know the rules. This is greeted by officers with some suspicion since the type of lawbreakers who know the rules are those who are prepared to have or who already have had dealings with the police, are those who have something to hide and are those who are trying to secure some advantage. In other words, they are disreputable and morally guilty lawbreakers who deserve to be punished by rather than to benefit from the effects of mental disorder.

## CONCLUSION

The introductory part of this chapter stated its aims to be threefold: firstly, to discover the kinds of behaviour engaged in by lawbreakers that officers consider to be extra-ordinary; secondly, to investigate the concept of excusability (i.e. issues of respectability and moral innocence); thirdly, to investigate the concept of deservedness of mental disorder (i.e. issues about the effects of mental disorder). In adopting this approach, the intention of the chapter has been one of revealing the ways in which some lawbreakers come to be defined by police officers as mentally disordered.

There is no behaviour that is engaged in by lawbreakers that is essentially and always significant to police officers of mental disorder. Rather it is the case that behaviour is extra-ordinary in all of the circumstances in which it takes place. Further, police officers define some lawbreakers as mentally disordered as a means to an end, in other words, to (attempt to) get the job of moral justice done and to (attempt to) ensure that lawbreakers get the treatment, punishment or incapacitation by way of mental disorder that they deserve. Extra-ordinariness of behaviour, therefore, is inextricably bound up with respectability and disreputability, moral innocence and moral guilt which go to the issues of excusability and deservedness of mental disorder.

Police officers claim that lawbreakers who are mentally disordered behave in ways which are not 'normal'. However, when police officers talk of people who are mentally disordered *and* who are offenders, 'normal' takes on a particular meaning. 'Normal' behaviour, therefore, is behaviour which is typical of that engaged in by 'normal villains'. 'Normal villains' are the rule in police stations rather than the exception. Officers assume them to be 'sane' and knowing and their behaviour to be willed. Since they are morally responsible for their lawbreaking they deserve to be punished for it. 'Normal villains' often behave in ways which in other circumstances would be unusual, for example, directing threats and violence against officers or refusing to take part in conversations with them.

Officers make sense of (and normalise) this unusual behaviour by empathising or stepping into lawbreakers' shoes. It is because 'normal villains' are knowing and responsible and morally guilty that their behaviour is understood by officers as being directed towards a purpose. That purpose is one of securing an advantage that is directly or indirectly associated with their getting away with it. Therefore, 'normal villains' resist arrest and refuse to admit to their crimes in an effort to hamper or evade the process of police investigations. Where the behaviour of 'normal villains' is more out of the ordinary than is usual, where they are too violent or too silent, officers continue to make sense of it by reference to motives concerned with getting away with it. Behaviour that would otherwise be senseless behaviour is not taken as indicative of mental disorder. Rather it is taken by officers as an attempt to evade punishment by reaping the benefits that every 'normal villain' knows to be attached to mental disorder.

Mentally disordered lawbreakers are presumptively 'insane' and lacking in responsibility both for their condition and for the behaviour that results from it. Stepping into the shoes of 'normal patients' reveals their behaviour to officers as motiveless and directed towards no discernable advantage. Indeed, it may well lead to their long-term incapacitation by way of hospitalisation. The evidence that officers cite as indicative of mental disorder is that which they suggest is 'ungovernable', which cannot be manipulated. This evidence is particularly to be found in psychiatric histories, hospital settings and the physical stigma of mental disorder. Once officers have defined lawbreakers as 'normal patients' even the most mundane of behaviours can become extra-ordinary because they are committed by someone known to be mentally disordered.

However, the same kind of evidence which justifies officers classing lawbreakers as 'normal patients' is the very evidence that they appear to suggest can be manufactured by lawbreakers who have succeeded in getting away with it. If 'normal villains' can deceive psychiatrists and others of the criminal justice system into believing that they are mentally disordered then frauds too would be in possession of good (and 'ungovernable') psychiatric evidence. To be psychiatrically diagnosed as mentally disordered, therefore, is no guarantor of moral innocence.

For police officers, the lawbreakers who deserve to benefit from the effects of mental disorder are respectable, morally innocent and excusable lawbreakers. (Conversely, the lawbreakers who deserve to suffer from the effects of mental disorder are disreputable, morally guilty and punishable). The notion of respectability as it emerges from police talk about 'victimised' and 'vulnerable' lawbreakers is concerned with behaving in ways in which

'decent' people typically behave. Respectability is not a merely a matter of class or gender or race. Rather it cuts across all of these and is signified, *inter alia*, by modes of dress and speech, by education, employment and social class. Yet it is clear that there is no one among these 'symbols' that is essentially and always significant to officers of respectability. As lawbreakers who are poor and unemployed and uneducated are claimed by the police to be respectable so middle-class professionals are claimed to be disreputable. Respectability is a moral concept and the hallmark of respectability as it is understood by officers is that of trust. 'Decent' people trust the police and this entails affording officers respect and co-operation. Consequently, symbols which can and do come to signify respectability or disreputability are interpreted in light of trust and thus it is lawbreakers who are possessed of an implicit trust in the police who deserve to benefit from mental disorder. The lawbreaking of the respectable is unexpected and extra-ordinary to officers in that 'decent' and morally innocent people do not typically behave in that way.

There are some circumstances in which mental disorder can confer an indirect benefit upon police officers themselves. 'Vexatious lawbreakers' are persistent nuisances whose lawbreaking tends not to be grave in terms of its consequences to others, being neither particularly violent or damaging to persons or property. Nor does their 'social inadequacy' present a grave danger to themselves, rendering them as neither incapable of existing outside an institution or as a suicide risk.. However, and on account of its persistent and high nuisance value, their behaviour can sometimes become intolerable to police officers and so, on pragmatic grounds, they are constructed as mentally disordered in an attempt to shift them into the hands of the psychiatric profession where officers hope that some remedy for their mental state may be available. Such lawbreakers are perceived by officers to be deserving of mental disorder since, even if unable to offer a remedy, modes of treatment offer at least the prospect of incapacitation by way of hospitalisation. Thus, behaviour that is typical of 'normal villains', such as intoxication, is explained as extra-ordinary in order that 'vexatious lawbreakers' be distinguished from the rest of the undeserving lawbreakers (and 'vexatious lawbreakers' will be more fully discussed in Chapter 5).

The lawbreakers who deserve the punitive effects offered by mental disorder are 'normal villains'. While officers believe that 'normal villains' are intent upon getting away with it and are capable of acting as if they were mentally disordered in order to achieve that end, this pretence is sometimes effective enough to coerce officers into treating such lawbreakers as if they were 'really' mentally disordered. Officers are not prepared to take the risk of their getting into trouble where the behaviour is sufficiently extra-ordinary so as to

raise doubts in their minds as to the well-being of 'normal villains'. In affording them all of the safeguards that are designed to protect vulnerable and mentally disordered lawbreakers, including that of calling a doctor, officers create the very risk (that 'normal villains' will get away with it) that they would wish to avoid. Therefore, and justified by officers on the grounds that such villains are morally guilty, officers set about undermining the appearance of mental disorder that may lead doctors and others of the criminal justice system to 'mis-diagnose' villains as patients and open the door to insufficiently punitive modes of treatment (such as out-patient hospital attendance). If there is a risk that villains are to be diagnosed as patients then officers wish the consequences of that diagnosis to amount to the punishment that they deserve and so construct such lawbreakers in the most disadvantageous way that is possible.

The efforts that officers put in to rewarding the respectable, incapacitating the nuisances and punishing the disreputable will form the basis of the discussions in Chapter 5.

## CHAPTER 5

### Mental Disorder And The Avoidance Of Trouble

#### INTRODUCTION

The previous chapter was concerned with the process of categorisation by the police of extra-ordinarily behaved lawbreakers as mentally disordered. This process was framed as the organisational response of the police to what Bauman (1989:64) terms 'heterophobia',

that diffuse....unease, discomfort, or anxiety that people normally experience whenever they are confronted with such 'human ingredients' of their situation as they do not fully understand, cannot communicate with easily and cannot expect to behave in a routine, familiar way.

For police officers, mental disorder is a way of making sense of what would otherwise be nonsense. However, and as asserted throughout this thesis, mental disorder is a means to an end. It became apparent in the course of the previous chapter that in defining extra-ordinarily behaved lawbreakers as mentally disordered, officers (attempt to) secure what they believe to be lawbreakers' just deserts. 'Mental disorder' has the capacity to treat, to punish or to incapacitate those lawbreakers who deserve to benefit from or to suffer from such effects. But because police officers have no authority to diagnose mental disorder nor to administer treatment to those who suffer it, it is not possible for officers alone to ensure that lawbreakers get their legal and moral just deserts (although informal diversion away from the police station and criminal justice system can be possible - as discussed in Chapter 3 and below). Definitions of mental disorder made in the present, therefore, are understood by officers as being capable of bringing about effects in the future. Defining extra-ordinarily behaved lawbreakers as mentally disordered is an organisational response by the police to the

still wider phenomenon of anxiety aroused by the feeling that one has no control over the situation, and that thus one can neither influence its development, nor foresee the consequences of one's action (Bauman, 1989:64).

As discussed in Chapter 3, police officers are required to do something with extra-ordinarily behaved lawbreakers. Present actions (and inactions) bring about future effects. Officers, therefore, do not merely *name* these lawbreakers as mentally disordered but also *treat them as* mentally disordered by invoking the formal rules of law (under the Mental Health Act 1983 and the Police and Criminal Act 1984 which were explained in Chapter 3) which are particular to the mentally disordered lawbreaker. The present chapter considers the ways in



which officers (attempt to) ensure that lawbreakers get their just deserts after they have left the police station. This involves

- (i) an examination of the formal means by which police officers get the job of legal justice done; and
- (ii) the informal means by which police officers get the job of moral justice done.

So far, the ways in which police officers deal with extra-ordinarily behaved lawbreakers have been presented in terms of managing the risks of 'getting it wrong' (Chapter 1), which results in lawbreakers 'getting away with it' (Chapter 2) and officers 'getting into trouble' (Chapter 3). These concepts were discussed in the previous chapter in the context of getting the categorisation of lawbreakers as respectable or disreputable, as deserving or undeserving wrong and the consequences which potentially flow from such mistakes. The present chapter is concerned with discussing these concepts in the context of what officers can do wrong and the possible consequences which flow from getting their formal or informal actions (or inactions) wrong.

It must be noted that the process of defining extra-ordinarily behaved lawbreakers as mentally disordered and the process of treating such lawbreakers as mentally disordered do not follow each other in any fixed linear progression (see also Chapter 4 on this issue). Officers can and do take action first and subsequently come to define lawbreakers as deserving of mental disorder. Moreover, and as indicated above, merely to define lawbreakers as deserving or undeserving of mental disorder does not inevitably guarantee that officers are able to treat such lawbreakers as if they are 'real patients' or 'real villains'. Nor can officers ensure that the morally innocent get away with it and the morally guilty do not. Put in its most simple form, the principle of just deserts as it is understood by police officers requires that those who deserve to benefit from the symbolic and/or functional effects of mental disorder should do so while those who do not deserve to benefit should not. In its most simple form, the practice of just deserts would allow police officers to divert away all of the deserving from the police station (and from the criminal justice system) by way of inaction or by use of the Mental Health Act 1983. All of the undeserving would then be arrested, charged and processed through the criminal justice system in the 'normal' way.

But legal and moral justice is only to be achieved when the something that officers do is done in accordance with formal and informal rules which constitute the organisational framework of policing. There are extra-ordinarily behaved and deserving lawbreakers

whose behaviour is sufficiently 'criminal' that they must be the subject of arrest, detention and charge, that is, treated in accordance with the same rules that would be invoked were they 'normal villains'. On the other hand, there are undeserving lawbreakers whose behaviour is sufficiently 'sick' that they must be treated by officers in the same way as they would treat mentally disordered lawbreakers (according to the various provisions explained in Chapter 3 and noted above). The formal courses of action that are available to officers are limited not only by the rules of law but also by the bureaucratic workings of operational policing. In treating the deserving **as if they were 'real' criminals** and the undeserving **as if they were 'really' mentally disordered**, officers create the risk that the morally innocent will be punished, the morally guilty will get away with it and the vexatious not receive the treatment or incapacitation that they deserve. The risk that lawbreakers will not receive their just deserts is created by officers who are concerned to avoid getting into trouble (with their colleagues, their superior officers, others of the criminal justice system and so on). The reason that police officers get into trouble (as discussed in Chapter 3) is that they fail to successfully justify their actions (or inaction) according to a known rule and ultimately according to a legal rule. Further, officers get into trouble not merely because they get it wrong but because they are found to be responsible (by their colleagues, their superior officers, others of the criminal justice system and so on) for getting it wrong. Keeping out of trouble, therefore, entails officers' 'covering their backs' and ensuring that if and when something does go wrong it is the responsibility of others inside and outside the criminal justice system (see below).

The prospect of getting into trouble is a real one since police officers are regularly

required to face situations where the risk lies in the unpredictable outcome of encounters with other people...the threat of sudden attack... (Reiner,1992:110).

However, covering one's back does not simply entail officers protecting themselves (and others) from the threat of physical harm. Getting it wrong, as explained in Chapter 3 and below, can damage not only officers' professional reputations but also those of the organisations of which they are a part. As one officer explained,

When you decide what to do with people you look at the consequences. You want to protect your own back and you want to protect your employer's back. You don't want to get into trouble because of your decision. (Custody Officer:City Station:Respondent No.49)

So, when officers cover their individual backs and avoid getting into trouble with their

colleagues, their superiors and others of the criminal justice system, they also cover their organisational backs and avoid getting these others into trouble.

'Covering one's back' must be explained here in more detail. It comprises the following

- (i) saving one's face
- (ii) doing one's job
- (iii) passing the buck

(i) The notion of saving one's face was introduced in Chapter 1. Face is concerned with the authority that police officers must maintain before all of those people with whom they come into contact in the course of their duties if they are to do their job effectively. Each police officer

represents authority, backed by the potential use of legitimate force....But in each individual encounter this presentation is liable to be challenged when authority has to be exercised over someone (Reiner,1992:110).

What is put at risk, therefore, in each 'encounter' with extra-ordinarily behaved lawbreakers is police officers' perception of themselves as police officers and their professional reputation and standing. As Goffman (1967(a):5) states, face is 'the image of self delineated in terms of approved social attributes'. To save one's face is to

ensure that a particular *expressive order* is sustained - an order that regulates the flow of events, large or small, so that anything that appears to be expressed by them will be consistent with [their] face (Goffman,1967(a):9).

In the analytical context of covering one's back, the notion of saving one's face must be briefly but further developed. The saving of one's face often involves the reciprocal saving of another's face. In their dealings with extra-ordinarily behaved lawbreakers who deserve to be mentally disordered, particularly those who are respectable, an officer will usually tend 'to conduct himself [sic] during an encounter so as to maintain both his [sic] own face and the face of the other participants' (Goffman,1967(a):11).

Further, these 'other participants' are not necessarily present at the scene of the 'encounter'. As indicated above, when acting in their professional capacity, police officers are the representatives of a much wider organisation. The authority and good standing of the

police and of the criminal justice system are vested in the public faces of officers. If individual officers get it wrong and lose face then so do these others.

(ii) If officers are to avoid getting it wrong and getting into trouble then they must do their job and do it effectively and efficiently. Their organisation operates a functional division of labour (Bauman,1989:98) within which each of the officer ranks and specialisms has their own particular tasks to perform and their own professional responsibilities to discharge (which will be further discussed below). Officers get into trouble when they fail to justify their actions or inactions according to a known rule and ultimately according to a legal rule. So, they must ensure

that an account be given within the police organisation which meets all appropriate legal, organisational and occupational criteria (Kemp et al,1992:19).

If officers should do other than it is their job to do, such justification becomes difficult. Officers lose the protection offered by doing no more and no less than one's job.

Police officers are

concerned to get from here to tomorrow (or the next hour) safely and with the least fuss and paperwork (Reiner,1992:128).

Doing one's job properly, therefore, means avoiding situations wherever possible that are likely to cause officers some kind of trouble and by adopting short rather than long-term goals. Indeed, the goal of officers and their organisation is one and the same and that is the avoidance of trouble through efficient and effective performance of one's tasks.

The very nature of police work, particularly that which involves dealing with extra-ordinarily behaved lawbreakers, often necessitates swift decision making. Problems have to be resolved expeditiously and actions (or inactions) rationalised and justified at some later time. As one constable put it,

You have to think on your feet.(Police Constable:City Station:Respondent No.28)

This can involve officers giving priority to legitimate and formal courses of action since in playing it by the book they are less likely to get into trouble.

Often we find that if the principal aims of an organisation are to be achieved, then it will be necessary at times to by-pass momentarily other details of the organisation, while maintaining the impression that these other ideals are still in force. In such areas, a sacrifice is made not for the most visible ideal but rather for the most legitimately important one

Doing one's job efficiently and effectively creates the appearance of competence and craftsmanship (Skolnick, 1975) which goes some way towards saving one's face. Furthermore, and as Skolnick (1975:224) points out, 'the norms of the police are fundamentally pragmatic.' To arrest extra-ordinarily behaved lawbreakers who deserve to be mentally disordered and to detain the undeserving under the Mental Health Act 1983 may not guarantee moral justice but may guarantee the legality of officers' actions. The ideal of moral justice often has to give way before the reality of keeping out of trouble.

(iii) Finally, covering one's back requires that officers pass the buck to someone else. It has been explained (above) that officers get into trouble not because they get it wrong but because they are found to be responsible for getting it wrong. Consequently, the less that officers have direct dealings with extra-ordinarily behaved lawbreakers the less they are likely to be held responsible for any problems that may later arise. Officers, therefore, pass the buck of doing something with these lawbreakers (and the attendant responsibility for doing it wrong) to others as quickly as is possible. While 'others' most particularly refers to superior officers and doctors it will become apparent in the course of this chapter that the field is somewhat wider.

However, in the course of this analysis, the notion of passing the buck is not restricted in its meaning to the passing of what may be referred to as the 'functional' responsibility for extra-ordinarily behaved lawbreakers. Passing the buck is also given the meaning of passing 'moral' responsibility to others. By taking courses of action or inaction that result in their keeping out of trouble, officers create the risk that justice will not be done: that neither the morally innocent nor the morally guilty will get what they deserve (see Chapter 3 and above). Minimising the possibility of one kind of risk can maximise that of another kind, since the 'best interests' of officers are often accrued to the detriment of lawbreakers 'best interests'. The short term goals that are produced by the methods employed in covering one's back are damaging in their effects to the securing of both moral and legal justice. The ultimate outcome in terms of the treatment or punishment of extra-ordinarily behaved lawbreakers who are dealt with by police officers is never a foregone conclusion. Officers can never be absolutely assured that their superior officers or doctors or others of the criminal justice system will treat those lawbreakers that they 'know' to be deserving or undeserving of mental disorder as mentally disordered. That is, other professionals will get the definition wrong and consequently do the wrong thing. Therefore, it is not sufficient that

officers merely define the lawbreakers as mentally disordered. In order to get lawbreakers their just deserts, officers have to imagine the future and predict and take action to pre-empt the outcome. In other words, they have to adopt a long-term goal (to be understood throughout this chapter as attempting to ensure that the morally innocent become mentally disordered and receive its least punitive effects; that the morally guilty are punished and, if defined as mentally disordered, receive its most punitive effects; that 'vexatious lawbreakers' receive the treatment or incapacitation that they deserve).

However, what officers do (or do not do) with the intention of bringing about future effects can only be done within the limitations imposed by the necessity of keeping themselves and their organisation out of trouble. Actions or inactions must therefore be capable of being justified according to a known rule and ultimately to a legal rule. Consequently, and in spite of their best efforts, officers are often ineffectual in securing just deserts for extra-ordinarily behaved lawbreakers. Morally innocent lawbreakers are punished, morally guilty lawbreakers get away with it and 'vexatious lawbreakers' remain inadequately and inappropriately dealt with by the criminal justice system. Officers are faced with the unpleasant knowledge that they may bear a moral if not a legal responsibility for a failure of justice. So, officers cover their backs by passing the buck of moral responsibility for the outcome onto others involved in the process of doing justice (and these others will be discussed in the course of this chapter).

When moral justice is legally done police officers are more than willing to lay claim to the pivotal role that they have played in getting extra-ordinarily behaved lawbreakers what they deserve. Success is judged on the outcome. Where moral justice is not legally done, officers retreat into their organisational role of being

only a single cog in an ever-moving mechanism which prescribes to [them] an essentially fixed route of march (Weber, 1948(1991ed):228).

Doing something with extra-ordinarily behaved lawbreakers is judged by officers not on the basis of the eventual treatment or punishment disposal but primarily on the basis of the success of the officers' own part of the operation (Bauman, 1989:100). Passing the buck of moral responsibility is to create a distance between the outcome and one's role in it. Such distantiation is not an impossible process given the diverse and differentiated roles that others (inter alia, superior officers and doctors) have to play and to whom the buck of responsibility can be shifted. As Bauman (1989:101) puts it,

As outer connections of action are effectively removed from the field of vision, the bureaucrat's own act becomes an end in itself. It can be judged only by its intrinsic criteria of propriety and success. Hand-in-hand with the vaunted relative autonomy of the official conditioned by his functional specialization, comes his remoteness from the overall effects of divided yet co-ordinated labour of the organization as a whole. Once isolated from their distant consequences, most functionally specialized acts either pass moral tests easily, or are morally indifferent.

Having reviewed the processes involved in keeping out of trouble while getting the job of moral justice done it is necessary that this chapter accomplishes the following:

- (i) describes the nature of the trouble that extra-ordinarily behaved lawbreakers present to police officers.
- (ii) describes the ways in which police officers can get it wrong and consequently get into trouble.
- (iii) describes the means by which officers can keep out of trouble by covering their backs.
- (iv) describe the means by which police officers (attempt to) get extra-ordinarily behaved lawbreakers their just deserts while simultaneously keeping out of trouble.
- (v) describe the ways in which police officers reconcile any failure to get extra-ordinarily behaved lawbreakers their just deserts.

The chapter is in two parts

**(i) Doing Something with Extra-ordinarily Behaved Lawbreakers Outside the Police Station: or 'Sorting It Out'.**

This part assumes that police encounters with extra-ordinarily behaved lawbreakers are commonly (although far from inevitably) initiated in public and private places outside the police station and, further, that the officers involved are drawn from the lower ranks. Therefore, this part is concerned with the kinds of formal and informal action (and inaction) that officers take to (attempt to) ensure that, while covering their own backs and keeping out of trouble, lawbreakers get their just deserts. Where lawbreakers are removed to the police station and into the jurisdiction of the custody officer, the issues of 'doing something' become centred around the accessing of medical disposals (that is, calling the doctor) and the necessity for continued detention and investigation. Although this latter process does not take place strictly outside the police station it does take place outside the formal criminal justice process and has therefore been included in this part.

**(ii) Doing Something with Extra-ordinarily Behaved Lawbreakers Detained Inside the Police Station: or 'Fair Play'.**

This part is concerned with extra-ordinarily behaved lawbreakers who are detained in the police station for further investigation in respect of their alleged commission of a criminal offence. It is here that doctors and others from outside the police organisation become involved with lawbreakers and the investigation process. The issues become centred around the formal and informal means deployed by officers which are intended to ensure that, while keeping out of trouble, both officers and these others get the job of justice done.

The headings and sub-headings which divide this chapter constitute the working (or organisational) rules by which police officers regulate the day-to-day policing of extra-ordinarily behaved lawbreakers.

**I. DOING SOMETHING WITH EXTRA-ORDINARILY BEHAVED LAWBREAKERS OUTSIDE THE POLICE STATION: OR 'SORTING IT OUT'**

Encounters with lawbreakers who are behaving in extra-ordinary ways in public and private places are potentially dangerous situations.

It just puts you in a bit of fear really because if people are not thinking in the same way that you are you don't know what they are going to do next. (Police Constable: Rural Station: Respondent No.42)

Uncertain as to the nature of the threat and the direction that it might take, officers draw upon their police commonsense and experience and play out 'worse case' scenarios of what such people might be expected to do next (to themselves, to others, to property and so on). The course of action or inaction that officers take must be the right one. In other words, it must be one that avoids trouble. Since 'getting into trouble' is a concept which is repeatedly employed throughout this chapter, it is appropriate to re-emphasise that in order to avoid getting into trouble officers' actions must

- (i) be capable of being justified according to a known rule and ultimately according to a legal rule; and
- (ii) be performed in such a way that if anything should go wrong then officers cannot be held responsible.



Officers make one crucial point. The longer that the extra-ordinary behaviour goes on, the more that the potential risks to any persons or any property increase. So,

You can't let it get out of hand.(Woman Police Constable:City Station:Respondent No.19)

What officers must do is presented by them as being clear and urgent.

The priority is to sort it out.(Police Constable:City Station:Respondent No.28)

### **(i) The Attending Officers Sort It Out**

The kinds of situations that officers are called upon to attend often include extra-ordinarily behaved lawbreakers whose behaviour involves threatened or actual violence. Therefore, the physical safety of all those present (including officers and lawbreakers alike) is put at risk. Attending officers are responsible for protecting from harm (insofar as they are able) all persons and property present at the scene. So, for example, officers have to do something with the kind of lawbreaker described in the following account:

I've dealt with one particular lady who [sic] we ended up having to have sectioned. The best way to describe her would be 'wild'...screaming, violent, very aggressive, nasty, continually using foul language at the top of her voice, totally uncontrollable...very dangerous, frightening, in fact. (Custody Officer:City Station: Respondent No.17)

Even where lawbreakers' behaviour is not immediately threatening to the physical safety of persons or property (and this kind of behaviour is typically described by officers as amounting to 'people wandering around and such'), it may become so if permitted to carry on for too long unchecked.

You get a crowd gathering around and that makes them even worse.(Woman Police Constable:City Station:Respondent No.19)

Moreover, the gathering of a crowd does not merely increase the potential for some kind of physical harm. It also places unnecessary difficulties in the way of officers doing something with the extra-ordinarily behaved, in that they are required to appear competent in dealing with lawbreakers whose behaviour is disorderly and disturbing under the gaze of a public whose sympathies for the police cannot invariably be counted upon. The pressure is to take swift action.

There has to be something done because of the public. They've called us and they're present and they expect you to do something. So you have to get the person out of the way of the public, out of any more trouble.(Police Constable:Rural Station:Respondent No.39)

Lawbreakers getting into trouble increases the likelihood that officers too will get into trouble, even if only to lose face before the public. While all officers, including those in the early stages of their service, stress the desirability of avoiding confrontation with extra-ordinarily behaved lawbreakers, calming measures which involve 'talking them down' or 'taking them aside to find out what's wrong' are not usually ends in themselves. Rather they are merely pre-cursors to the removal of lawbreakers from the scene at the first opportunity.

*(a) 'Get them away from the scene'*

The first rule of sorting it out is a simple one.

Get them away from the scene. (Police Constable:Rural Station:Respondent No.37)

And, as will become apparent, this is what attending officers consider to be a fundamental part of their job to do.

The decision on whether to get them away from the scene under arrest or under s136 of the Mental Health Act 1983 is presented by officers as being motivated by considerations which are relatively simple and straightforward.

If the offence was of a serious nature, if it was such as damage to property or an assault then I would arrest them. But not if it was a minor public order offence. But if they are doing something that's worrying or a danger to the public or to themselves then you use a place of safety.(Woman Police Constable:City Station:Respondent No.24)

This statement contains the options available to officers who have to sort it out. Officers may exercise their powers of arrest in relation to any kinds of lawbreaking and in any public or private place. The use of s136 of the Mental Health Act 1983 is limited to circumstances where potentially harmful and extra-ordinary behaviour takes place in public. Informal action or inaction is possible in any number of undefined instances of lawbreaking by the extra-ordinarily behaved. A correlation is apparently suggested between the type of behaviour and the type of action (in that 'bad' behaviour is responded to by an arrest; 'mad' behaviour is responded to by a provision intended to access medical assessment; and 'nuisance' behaviour is dealt with by informal means). However, the same officer makes it clear that the primary concern is not to ensure that lawbreakers who deserve to be mentally disordered are 'legally' treated as mentally disordered. Nor is it to ensure that those who

deserve to be punished are 'legally' treated as offenders. There is one overriding priority.

It's not crucial which one you go for, you just use whatever means are possible to get them off the street. (Woman Police Constable:City Station:Respondent No.24)

Therefore, and this has been repeated throughout Chapter 3 and the introductory part of this chapter, the course of action (or inaction) that officers take to deal with extra-ordinarily behaved lawbreakers does not necessarily reflect officers perceptions of their moral guilt or moral innocence, their deservedness or otherwise of mental disorder.

It is not in every circumstance that lawbreakers will be 'bad' enough to deserve arrest and punishment nor 'mad' enough to deserve detention and treatment. In fact, formal action is not always the best way for officers to sort it out (as will be discussed below). Getting lawbreakers away from the scene can involve moving them on elsewhere without exercising any powers of compulsion. However, 'elsewhere' must usually be more than some illusory other place. As Kemp et al point out (1992:8) and citing Bayley and Bittner (1983:3), while

“... appropriate goals involve such objectives as establishing control, immediately protecting lives and property, and tending the injured, but not preventing future crimes or violence and not correcting social problems like marital discord or racial discrimination” ....the logic of deterrence....does impose on them an attentiveness to future crime and disorder, and they do care whether there are call-backs, at least during their shift.

To move a person from one geographical place to another may provide a short-term solution to the problem of what to do with extra-ordinarily behaved lawbreakers. However, this course may ultimately be counter-productive if they are deterred neither from returning to the scene nor from creating problems in some other place. This is not to imply that officers do not ever simply move lawbreakers on. At the point of lowest visibility and where attending officers are unsupervised by their superiors it is, according to some officers, unusual but not unknown to warn 'vexatious lawbreakers' engaging in low-level disorderly behaviour in public places to 'make themselves scarce' and not return to the scene.

However, a more satisfactory course to take is one which passes the buck and moves lawbreakers on but into the charge of persons who have some responsibility to care for them. Therefore, informal methods of 'getting them away from the scene' involve 'getting them into the charge of another'. Unfortunately, these 'others' are limited in number. It is the family that is most commonly cited by officers as being a most likely repository for its disturbed and disorderly members who are behaving in ways which cause unease to others (see further below). Where families are unavailable or unwilling or unable to assume

responsibility, officers express regret that moral justice for the deserving cannot easily be done by using short cuts to medical disposals. While a hospital is among the possible places of safety listed in the Mental Health Act 1983 (s135), actually to be able to escort troublesome people there directly (and bypassing the formalities of the criminal justice system) is expressed by officers to be an ideal rather than a reality. While long-serving officers present anecdotal (but otherwise unsubstantiated) accounts about earlier times when local psychiatric hospitals were willing to take in those for whom officers declined responsibility, the same officers mourn the passing of these open-door policies.

At one time we used to take them straight to hospital...the hospital was willing to take them and then social services were notified. Now that they are under different management the caring aspect has gone. It's a case of how much does it cost for this man to be here. (Custody Officer:City Station:Respondent No.50)

On the other hand, and despite it making their job easier, officers do recognise the injustice that arises from opening the door too readily and too widely.

Twenty or thirty years ago people went straight to hospital for just a nervous breakdown and they were kept in far too long. Now you recognise the problem and you deal with it either in the community or in a home.(Detective Constable: City Station:Respondent No. 30)

These two statements encapsulate the predicament in which police officers find themselves when dealing with extra-ordinarily behaved lawbreakers whom they define as being deserving of mental disorder (and this theme will surface throughout the course of this chapter). Where the extra-ordinary behaviour of morally innocent lawbreakers who deserve to get away with it is explained by officers as being caused by mental disorder (as discussed in Chapter 4), the 'problem' often becomes one that officers feel can be most appropriately and expeditiously dealt with by the medical profession. But equally often, the lawbreakers that officers define as deserving of mental disorder are the persistent nuisances whose offending is relatively minor, in other words, the 'vexatious lawbreakers' described in Chapter 4. Suffering as they do from intractable and 'quasi-medical' conditions which have their origins in adverse social circumstances and drink and drugs, these are the very people that have little appeal to the medical profession. Such lawbreakers have problems that psychiatrists and hospitals can neither cure (on account of their origins in adverse social conditions of poverty, unemployment and so on) nor contain (because contemporary policies no longer offer long-term therapeutic hospitalisation - as discussed in Chapter 3). Attending officers can find themselves compelled to take unsatisfactory courses of action.

I was called to the [local hospital] following a report of man causing a nuisance. I saw the man who told me he was ill and needed treatment. I could smell liquor on his breath. The hospital staff then told me he was a regular and they wanted him removing. He then told me that if the hospital would not admit him he would throw himself in the canal. I told the hospital staff this but they still refused to see him. I then decided to detain him for his own protection.(Probationary Police Constable:Force Training Centre:Respondent No.13)

The reason that attending officers find the courses of action that they have to take to be unsatisfactory is not necessarily because such courses of action offer no real and longer-term solution in dealing with this type of lawbreaker. While the hospital system can refuse to treat them, the criminal justice system is unlikely to be able to offer either the incapacitation or rehabilitation that will prevent them from causing future problems for police officers. However, and as already explained in the introductory part of this chapter, all officers can and do rate their success in doing their job on the achievement of short term goals. In the circumstances described above, the short-term goal is to defuse a potentially dangerous situation without getting into trouble (in particular to prevent the doing of harm by lawbreakers to themselves and to others alike without losing face). Yet (and as also explained in the introductory part of this chapter), when officers take action to avoid the risk of getting into one kind of trouble they can create the risk of getting into trouble of another kind.

The detention of extra-ordinarily behaved lawbreakers whom officers define as mentally disordered under s136 of the Mental Health Act 1983 would seem an obvious course for those officers to take where the behaviour takes place in public (and, indeed, its use is given authoritative approval in the Home Office Circular 66/90)(see Chapter 3). Not only does it go some way to ensuring that those who do not deserve to be punished get their just deserts, it also allows attending officers to pass the buck to their custody officers thereby making others responsible for doing something.

If someone is brought in under s136 there is no option. The police surgeon and the approved social worker have to be called within 6 hours.(Custody Officer:City Station: Respondent No.17)

Yet according to the officers interviewed, s136 of the Mental Health Act 1983 is relatively little used by them. In fact, the instance of their use of the provision over the previous year was cited as being 'once or twice' or 'not at all'. On the other hand, all officers told stories about 'mentally disordered offenders' and 'mentally disordered people' whose bizarre or disturbing behaviour in public places appeared to threaten the safety of all persons involved

and who appeared as in need of the care and control that removal to a place of safety is intended to access.

A common explanation given by officers for their not taking extra-ordinarily behaved lawbreakers to the police station as a place of safety is the availability of other means of dealing with such people (which will be discussed below). Sorting it out under s136 of the Mental Health Act 1983 invariably places 'welfare' obligations upon custody officers. In so doing, attending officers disrupt the usual and relatively straightforward legal and working routines that custody officers adhere to following a 'normal' arrest (see Chapter 3 and below). Therefore, the apparently straightforward and legitimate solution to dealing with extra-ordinarily behaved lawbreakers, namely the doing of one's job, can get attending officers into trouble with their custody officers.

Each person within the hierarchy of command is accountable to his immediate superior, and thus is naturally interested in his opinion and approval of the work. (Bauman,1989:100)

As one custody officer somewhat ambiguously asserted when discussing officers' use of s136 of the Mental Health Act 1983 and the type of people brought into police stations as a place of safety,

I don't like people who cause problems.(Custody Officer:City Station:Respondent No.48)

Officers, even those in the earliest stages of their training, are aware that placing a strain on the inadequate resources of the police station places a concomitant strain on the custody officers in whose temporary care those detained under s136 of the Mental Health Act 1983 are placed. One attending officer expressed his reluctance to use the provision.

If I have to use a place of safety I would rather that it was not a police station. It's better to go straight to hospital. When you bring them to the station, they clog up the cells. We haven't got any facilities here for the mentally disordered. (Police Constable:City Station: Respondent No.28)

However, and upon examination, this claim is incongruous.

Firstly, people who are arrested *and* who behave in extra-ordinary ways *are* detained in police stations. Disturbed physical or mental health and intoxication by drink or drugs, conditions where medical assistance must often be sought, are no bar to detention and interview in facilities intended for 'normal villains' (as will be discussed below).

Mental illness does not necessarily mean that people are not fit to be dealt with by the police...they may be suitable.(Custody Officer:City Station:Respondent No.46)

Implicit in this claim is the explanation of the incongruity, an explanation made more explicit by a female probationary officer who, in reference to those brought to the station as a place of safety, stated

It's not in the police interests to hold them and tie up the cells. (Probationary Woman Police Constable:Force Training Centre:Respondent No.3)

Once the would-be suicides, the irrationally violent (cf Bittner,1967) and the bizarrely behaved who are detained under s136 of the Mental Health Act 1983 are classed by officers as 'normal patients' (or as if they were 'normal patients') officers treat them as belonging to 'the doctors' (and sometimes 'the social workers'). Officers wish to disclaim responsibility for them as soon as is possible (see further below). If cells are to be 'tied up' with 'mentally disordered' lawbreakers, then their occupants must be those in whom the police do have an interest. That is, morally guilty lawbreakers who do not deserve to be mentally disordered and morally innocent lawbreakers whose lawbreaking is such that police officers would get into trouble if they failed to detain them for the purposes of further investigation. So, when officers come to justify doing something other than using a place of safety for those lawbreakers who appear on moral grounds to deserve to be treated as mentally disordered or those who deserve the incapacitation that mental disorder can offer, they invoke the 'limited resources' rationale.

A police station does not have the suitable facilities to keep any person overnight as a place of safety. Most of the time we don't have the manpower either.(Probationary Police Constable:Force Training Centre:Respondent No.8)

(The justifications for the use of s136 of the Mental Health Act 1983 will be dealt with below). 'Getting them away from the scene' requires that attending officers balance competing interests. They must endeavour to keep out of trouble with their custody officers (and any other of their superior officers) by doing their job 'at the point of least organisational visibility' (Kemp et al,1992:121). At the same time they must avoid getting into trouble both with the victims of extra-ordinarily behaved lawbreakers and with the public for doing or appearing to do nothing. Further, they must avoid shouldering the functional and moral responsibility for what they do alone by passing the buck to others.

*(b) 'Keep it in the family'*

What officers do (or do not do) with lawbreakers who behave in extra-ordinary ways depends upon neither the degree nor the type of the criminality. Rather it depends on officers avoiding getting it wrong which keeps them out of trouble and ensures that lawbreakers get their just deserts. When officers are called upon to deal with potentially dangerous domestic situations where the use of s136 of the Mental Health Act 1983 is not available (although see below), appropriate resolutions must be sought.

As explained above, officers share the view that, whenever it is possible and proper to do so, family members who behave in extra-ordinary ways should be returned to or left in the care and (optimistically) the control of their families. Such a course allows officers to cover their backs by passing responsibility to another and to keep the problem away from the eyes of their custody officers. However, where the victim and the lawbreaker share the same domestic arrangements and where the nature of the behaviour is grave and there is a possibility that it will recur officers have to do their job and take formal action. A compromise can sometimes be reached which gives every appearance that officers are doing something and doing it effectively and that will prevent the situation recurring in the future (or at least in the future of their shift).

There was this domestic incident, a husband and wife, the husband, he flipped. He held his son to ransom and he had smashed up the house as well. But he hadn't really flipped. We went into the house, downstairs because he was in the bedroom upstairs, and we talked to him for three hours. He had been drinking but he was taking tablets for depression as well and that was what had made him flip. When the effects wore off he could talk to us properly. He was lucid. There was no wish by the family to deal with him. They didn't want to press any charges so we brought him in for a breach of the peace so that everybody, everything could calm down. Then he went back home to his family. We didn't take him to the magistrates. (Custody Officer: Rural Station: Respondent No.40)

Officers' accounts of the courses of action (or inaction) that they take are framed in a way that is intended to counter opposition (from any quarter) to their chosen means. The circumstances of the behaviour described by the officer tend to cast the father rather than the son in the role of the victim, in other words, as a 'victimised lawbreaker' described in Chapter 4. If officers wish the deserving to get away with it then they must produce a rationale which justifies both arresting someone who does not deserve to be arrested and not calling a doctor to someone who deserves to be mentally disordered. A device commonly used by officers is that of 'temporary mental disorder'. This 'quasi-medical' and transient condition reflects the fact that the 'victimised lawbreaker' is morally innocent and does not deserve to be punished. At the same time, and because it is only a transient condition, officers can justify their taking no immediate recourse to a doctor. On the other hand, the



nature of his lawbreaking is grave, may possibly recur and justifies his arrest. While deserving to be mentally disordered and to get away with it and while the family concur in this, officers cannot risk taking sole responsibility for keeping it in the family. Sorting it out requires that officers deal with the lawbreaking. They do so by getting the lawbreaker away from the scene under arrest for breach of the peace. Exercising this power of arrest shifts the responsibility for doing something on to the custody officer (see Chapter 3 and below). Yet it does so without automatically setting in motion any of the processes which are normally contingent upon the exercise of powers of detention (discussed in Chapter 3 and below), particularly those which so disrupt the jobs of custody officers. Attending officers can safely 'get them away from scene' while custody officers can 'keep it in the family'. This is because 'breach of the peace' is sufficiently ill-defined and ambiguous to obscure lawbreaking which, considered on any objective grounds, would be grave. Its appeal is explained by Kemp et al (1992:121) in that the offence being whatever they define it to be, officers

can arrest and effectively terminate the incident without having to take statements, gather evidence and substantiate a serious criminal charge. Furthermore....it is unlikely that their action will be reviewed by the courts since the persons involved will probably be released with a caution.

Custody officers are committed to no other course of action (or inaction) than that which they feel is warranted by the circumstances (in order to cover their backs while getting lawbreakers their just deserts) since breach of the peace leaves them free to detain or release the extra-ordinarily behaved lawbreaker.

There is some truth, therefore, in officers' claims (above) that the priority is to get extra-ordinarily behaved lawbreakers away from the scene and that whether they are removed to the police station under arrest or to a place of safety is of secondary concern. Despite being arrested (and thereby treated as a 'normal villain') it is not impossible that the morally innocent will get away with it. However, in doing their job and exercising their powers of compulsory detention officers bring about both intended and unintended consequences for extra-ordinarily behaved lawbreakers. Officers' assertion that it is not the rule that is used but its effect that is most important is one that will be discussed further below.

*(c) 'Put their best interests first'*

As explained so far, in order to keep out of trouble officers often have to arrest lawbreakers who deserve to get away with it and to take to a place of safety others who do not. Officers, therefore, have to justify (to themselves and to others) treating the morally innocent as if they were 'normal villains' and the morally guilty as if they were 'normal patients'. Officers

tend to avoid the use of sophisticated rationales in these justifications.

Obviously their well being is uppermost. You've got to be concerned about their safety. Whether they have done anything wrong is neither here nor there. Everything can be sorted out later when they've had treatment or whatever. (Detective Constable:Rural Station:Respondent No.36)

Nor do the legal provisions available to officers which enable them to (compulsorily) 'get them off the streets' require that officers produce any sophisticated rationales for their use. In addition to their common law powers of arrest officers have at their disposal not merely the 'catch-all' provisions of place of safety and breach of the peace (above) but also s25 of the Police and Criminal Evidence Act 1984 (which empowers officers to arrest for non-arrestable offences in circumstances where, for example, persons pose a risk of harm to themselves or to others). All of these provide officers with good reasons to detain extra-ordinarily behaved lawbreakers (and against their will) for their own good. Received wisdom among more experienced and long-serving officers tends towards the use of the breach of the peace or place of safety. Conversely, every probationary constable in the early stages of training claimed that the fastest way to deal with those lawbreakers who behave in extra-ordinary ways in public places can be to utilise the discretionary power of arrest introduced by s25 of the Police and Criminal Evidence Act 1984.

You detain them for their own protection as a vulnerable person after committing a s25 (non-arrestable) offence... you can then involve a doctor at the station. (Probationary Woman Police Constable:Force Training Centre:Respondent No.3)

To be capable of justifying one's actions by reference to extra-ordinarily behaved lawbreakers' 'best interests' is valuable to officers for a number of reasons.

First and most importantly, it allows the 'interests' of the many to be subsumed into the 'interests' of the one.

My main priority is my own safety and you have to think about the rest of the public and then the safety of the individual as well. You have to get the person off the streets and so it might be in their best interests to take them to a place of safety. (Woman Police Constable:Rural Station:Respondent No.41)

Thus, 'my best interests' (and those of my colleagues, my superiors and my organisation) are translated into 'their best interests'.

Secondly, in propounding a 'best interests' rationale for what they do, officers address

an appeal to police commonsense that is difficult to challenge since 'it goes without saying' that the safety of the 'sick' and the 'mentally disturbed' is paramount. The acceptability of best interests as an all-encompassing justification for action facilitates officers' decisions to do something with such lawbreakers.

The most difficult problem with mentally disordered people is going to an incident where somebody is attempting suicide. My policy is to bring them into the station (under s136) and sort it out. If you use s136 and they turn out not to be mentally ill, then you can release them if the doctor says that they are not mentally ill.(Detective Sergeant:City Station:Respondent No.52)

The problem that the officer is talking about is not one that poses him some moral disquiet about the difficulties experienced by disturbed people that would lead them to try to take their own life. Rather it is related to the more realistic and pressing problem of how to effect the compulsory removal of a would-be suicide from private premises when there are apparently neither the grounds to arrest nor to enter and remove to a place of safety (since this applies only where the harmful behaviour takes place in a public place). Officers have to do something as a matter of urgency and, in opting to treat people as if they were mentally disordered, their appearance of competence can be maintained at the same time as safeguarding all of those involved in the situation. Using a rule intended to do one thing in order to do another is presented as a means to an end, and, as the officer pointed out, ends justify means. If rules are bent or even broken in pursuit of saving lives then who is going to complain about a mere technicality after the event. And indeed, it would be churlish to do so.

Again in the following example, since it is the protection of the person as a matter of urgency that is at issue, it is claimed by the officer concerned to be immaterial that s136 of the Mental Health Act 1983 is used to remove lawbreakers from a private place.

You can use a place of safety where there is a domestic. They are brought in for their own protection. No offence has been committed but it is purely for their own protection.(Custody Officer:City Station:Respondent No.17)

Therefore, a provision of the mental health legislation which is intended to protect and control the sick may equally be used by officers to protect and incapacitate the sane.

Conversely, officers claim that treating lawbreakers whom they believe to be mentally disordered as if they were 'normal villains' can be in their 'best interests'. Therefore, officers use provisions intended for the compulsory detention of the 'sane' for the benefit of the 'sick'.

You may have to arrest somebody for their own welfare. If you arrest them it is the only way to ensure that they get attention. You can sort out any problems in the station. (Probationary Police Constable: Rural Station: Respondent No.42)

Consequently, 'best interests' justifies a certain fluidity in officers' rule usage.

Finally, because it is in the 'best interests' of extra-ordinarily behaved lawbreakers to 'get them away from the scene', it is also in their 'best interests' that everything which relates to the lawbreaking be sorted out away from the scene. Officers, therefore, justify passing the buck of responsibility for doing something to someone else.

You can use s136 mainly where there is nothing else, for example, where they need care and control. But if there is damage, if they have damaged property or if they have assaulted somebody then you sort it at the station. (Custody Officer: City Station: Respondent No.17)

Officers thereby justify their actions as being the only responsible course that they can take and then devolve responsibility for ensuring that lawbreakers get their just deserts elsewhere. This forms the basis of the following discussion.

*(d) 'Keep your distance'*

If officers are to sort it out without getting into trouble then they must put a distance between what they do and the unintended consequences of what they do. That is, they must not be found responsible for getting it wrong and they must justify what they do according to a rule and ultimately according to a legal rule. But as this thesis has so far made clear, officers do not only risk getting into what may be described as 'legal' trouble (that is, that which results from any breach of legal rules). Nor do they only risk getting into what may be called 'organisational' trouble (that is, that results from any breach of policy or working rules). Officers also risk getting into what may be called 'moral' trouble which results from their being unable to secure lawbreakers just deserts. In order that they avoid all of these, therefore, officers distance themselves from the outcome by emphasising what it is their proper job to do; their success in doing that job properly; and by shifting the responsibility for anything that may go wrong elsewhere.

As officers insist, there are some things that it is just not their job to do. Indeed, there are some things that it is not feasible to do in situations where extra-ordinary behaviour threatens the physical safety of everyone involved. So, for example,

If he's an offender and you go there...or if he's a possible offender...I mean, you've got the power to arrest a suspect haven't you but you've also got a power to do a s136. Say he's

somebody who's gone crackers and smashed the house up or something and he's totally deranged for whatever reason. You can't talk to him, it's no use cautioning the man and saying 'you're entitled to this and that and you will be afforded a solicitor'. You've got a duty of care, if you like, so we arrest and we go to the police station where they're assessed and sorted out. (Detective Constable: Rural Station: Respondent No.36)

In such circumstances, attending officers are in no position to ensure that lawbreakers get their just deserts. Therefore, when officers talk about sorting it out they are talking about doing their job of getting lawbreakers away from the scene. When officers bring lawbreakers into the police station, their responsibility for doing that particular job ends. What to do next with these lawbreakers becomes a matter for the custody officer.

If they are brought to the station and there is any suggestion at all that you aren't happy with that persons mental ability, then straightaway that information has got to be brought to the attention of the CO. (Detective Constable: City Station: Respondent No.22)

The CO takes the necessary action...the responsibility of the PC ends when you inform the CO. (Woman Police Constable: Rural Station: Respondent No.41)

The custody officer is responsible for sorting out the welfare of extra-ordinarily behaved lawbreakers and for authorising their continued detention for the purposes of an investigation. Any further tasks that attending officers have to carry out in relation to detained people (particularly interviewing them) are carried out with the authority of the custody officer. If anyone is to get into trouble for improperly detaining 'mentally disordered offenders' (or offenders who later come to be diagnosed as mentally disordered) whose state of mental health puts them at physical or psychological risk (of self-harm or the making of admissions of guilt), it is the custody officer rather than the attending officers.

When officers pass on the 'functional' buck of responsibility for doing something they also pass on the buck of moral responsibility, engaging in a process of moral back-covering.

I shirk responsibility and put it in the hands of the CO. (Police Constable: City Station: Respondent No.31)

In passing lawbreakers into the hands of custody officers, attending officers are not doing any more or any less than they are legally compelled to do. S36 of the Police and Criminal Evidence Act 1984 requires that all lawbreakers who are compulsorily detained and brought into police stations must be handed over to custody officers (see Chapter 3). The responsibility that is being shirked is therefore a moral responsibility for the outcome of their actions. Attending officers thereby create a distance between what they do in the

present and the outcome for lawbreakers in the future, that is, throughout the criminal justice process and beyond. As Bauman (1989:98) explains,

All division of labour....creates a distance between most of the contributors to the final outcome of collective activity, and the outcome itself.

Furthermore (and as explained in Chapter 3 and above), when lawbreakers are brought into the police station as a place of safety, custody officers will invariably call in a doctor (and often a social worker). If lawbreakers are detained for questioning in respect of a further investigation then they are entitled to the assistance of legal advisers and appropriate adults (see Chapter 3 and below). If those who deserve to be treated are punished and those who deserve to be punished get away with it then all of these others will share responsibility for the outcome.

If, by their talk of 'sorting it out', officers intend to foster the impression that justice will ultimately get done and lawbreakers will get their just deserts then this impression is a misleading one. Officers are well aware that, as noted above, doing one's job brings about intended and unintended consequences for lawbreakers. According to Kemp et al (1992:18),

As an incident unfolds, the responding officer(s) will be faced with a series of broadly sequential and/or parallel interlocking options from which to choose in his or her search for a resolution. These options are themselves contingent on one another and therefore changing. Once an action or decision has been made, this will suggest new options while simultaneously ruling out others.

Once set upon a particular course that is consequent upon arrest (for example, questioning, searches and charges) or place of safety (for example, assessment by a doctor and compulsory hospitalisation) (see further below) it may be difficult if not impossible for any officer to ensure that the morally innocent get away with it by way of mental disorder and that the morally guilty do not. However, having to treat the morally innocent as 'normal villains' or the morally guilty as 'normal patients' is presented by officers as a mere definitional hiccup that will be sorted out later. 'Someone else' in the police station or in the criminal justice system will make sure that these lawbreakers get what they deserve. Since officers are distanced from the consequences of their actions, their assumptions are often misplaced (see below) and what is done in the name of 'best interests' may be in the 'worst interests' of the extra-ordinarily behaved lawbreaker.

And it is because the immediate 'something' that officers do to deal with lawbreakers who are behaving in extra-ordinary and disturbing and violent ways can bring about

unintended effects that officers stress the success of their own part in sorting it out while simultaneously shifting any responsibility for getting it wrong onto some other person or body of people further down the line. So, for example, one officer explained why 'mentally disordered offenders' are inappropriately found to be in prisons.

It is not picked up or recognised right from the start. They have a medical examination and are examined by social services but they are not felt to be disordered.(Detective Constable: City Station: Respondent No.27)

Thus, attending officers put a distance - a 'practical and mental distance' (Bauman,1989:99) - between their sorting it out in the present and the way that it is sorted out once lawbreakers have left their hands.

There's nobody that I have been called to that did not receive help, nobody I've dealt with who was mentally disordered who was not seen by doctor and the social services. Whether or not it was the case that they were given treatment, I don't know.(Woman Police Constable: City Station: Respondent No.24)

The practical distance in time and space between what officers do in the present and what happens to extra-ordinarily behaved lawbreakers in the future facilitates a moral distance between actions and outcome. Further, there exists a 'professional' distance between police officers and others of the criminal justice and medical professions. Officers do not really know what these others are legally and organisationally authorised to do (and what they cannot do) and do not really understand the ways in which they operate. Consequently, officers find it easy to lay the blame for lawbreakers failing to get their just deserts with someone other than the police. Sorting it out, therefore, is a process subjected

to....instrumental-rational criteria, and thus dissociated from moral evaluation of the ends (Bauman,1989:98).

## **(ii) The Custody Officers Sort It Out**

The opportunity for officers to allow those extra-ordinarily behaved lawbreakers who deserve to get away with it to do so is primarily afforded to attending officers whose policing takes place on the streets and away from the eyes of their superiors. Once attending officers make it 'official' by bringing such lawbreakers into the police station, the opportunities for the custody officer to sort it out by informal means are limited.

While correctly asserting their autonomy in relation to the decision to detain or release

lawbreakers from the police station (see Chapter 3), custody officers simultaneously qualify their apparent freedom of action.

Whether I have to call the doctor depends on what the person has done. Sometimes you can just get a relative to come in and see to them. That's unless a crime has been committed. If there's no danger to the public or to himself then these options must be looked at but you have to bear in mind that safety is a priority. (Custody Officer: Rural Station: Respondent No. 40)

However, even in circumstances where the lawbreaker is 'safe' to be released into the charge of a relative or some other person, that particular means of disposal is not inevitably appropriate. For custody officers merely to release lawbreakers from the police station without further formal action (such as calling the police surgeon) necessarily involves their overriding the decisions of the attending officers who brought them there. While s37 of the Police and Criminal Evidence Act 1984 permits custody officers to release lawbreakers placed under arrest by attending officers,

unless the custody officer has reasonable grounds for believing that his [sic] detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him,

custody officers risk that release being seen by attending officers as

a 'slap in the face'....The implication would be that a mistaken arrest had taken place. This would not only undermine the arresting officer's authority, but might expose him or her to disciplinary or legal action (Sanders and Young, 1994:140).

On the other hand, attending officers do learn through experience to avoid getting into this kind of trouble.

Some custody officers are more fussy than others. People's perception differs. (Police Constable: City Station: Respondent No.31)

Knowing your custody officer means knowing what that officer can and cannot do about extra-ordinarily behaved lawbreakers. Consequently, those who are formally detained under arrest or under s136 of the Mental Health Act 1983 have already been screened by the attending officers and those who are neither very mad nor very bad have, where possible, been filtered out and dealt with by other informal means (as described above).



*(a) 'Get the facts'*

The Police and Criminal Evidence Act 1984 establishes custody officers in a unique position as guardians of the interests of lawbreakers detained in police stations (a custodianship which also extends to the people brought into the station as patients under s136 of the Mental Health Act 1983). Custody officers are consequently legally responsible for the legal and physical welfare and well-being of all those who are in detention. If any harm should come to such lawbreakers in the course of that detention then it is custody officers who will get into trouble. The immediate risk of harm that they associate with extra-ordinarily behaved lawbreakers is not predominantly concerned with the threat that they pose to the physical safety of persons and property nor that their vulnerable mental state will lead to their making self-incriminating admissions (see Chapter 3). Rather, custody officers are more specifically concerned about the threat of self-harm that such lawbreakers pose to themselves. Therefore, and where custody officers have no interest in the continued detention of morally innocent or morally guilty lawbreakers (as explained above), it is in the best interests of those custody officers to shift 'sick' people out of police stations as soon as possible. Unless some informal means of doing so are appropriate (see above), this can only be achieved with the authority of a doctor (see further below).

Custody officers are under a legal obligation to record all of the details about lawbreakers which are relevant to their immediate or further detention in the police station (see Chapter 3). Not only is it in the 'best interests' of lawbreakers who suffer from disturbed states of mental health that they receive all of the safeguards available to them during their stay in the police station (including access to a doctor, a lawyer and an appropriate adult if required). Custody officers are also able to avoid getting into trouble in ensuring as far as they are able that no harm (or at least no harm that they can be held responsible for) comes to extra-ordinary behaved lawbreakers while in their charge.

Moreover, it is important to emphasise here that custody officers are in a position to treat lawbreakers as 'mentally disordered' despite their having being treated as 'normal villains' by the attending officers. In fact, to be vigilant for symptoms of 'mental disorder' constitutes a part of their job. Custody officers have no wish to get it wrong by detaining the extra-ordinarily behaved without the benefit of the safeguards under the Police and Criminal Evidence Act 1984 to which they are entitled only to later have them medically diagnosed as mentally disordered. This would effectively undermine the validity of any actions taken by the custody officers in respect of these lawbreakers and render any self-incriminating

admissions made by them worthless as a source of evidence (see Chapter 3 and below). A 'true' record of detention helps to protect custody officers from trouble. So, to do one's job as a custody officer is to properly discharge all of one's welfare obligations to detained lawbreakers. Therefore, and according to a number of custody officers, the first rule of sorting it out is to 'get the facts'.

Acting as welfare officers to the 'mentally disordered' will be discussed in some detail below. Acting as welfare officers to 'normal villains' (that is, those not defined as mentally disordered) is largely a matter of routine rather than amounting to some individualised approach to each and every detainee. The proforma of the custody record which charts the course of lawbreakers' detention obliges custody officers to address standard 'state of health' questions to them (for example, about whether they are taking prescribed medication); to assess from the evidence of their own eyes whether lawbreakers appear to be suffering from any kind of abnormal state of health, including intoxication by alcohol or proscribed drugs; and to tender all 'legal rights' information such as the caution and entitlement to legal advice. If custody officers are not told by others that a person is or is suspected to be 'mentally disordered' or if their immediate behaviour is not sufficiently out of the ordinary for custody officers to treat them as mentally disordered of their own accord then they will be treated as 'normal villains' because most people brought into police stations under arrest *are* 'normal villains'. And 'normal villains' are presumed to be in their right mind and to know their own 'best interests' (all of which was discussed in Chapter 3).

The thrust of the custody record is directed towards the custody officers filling in the appropriate boxes. The welfare obligations of custody officers are discharged so long as the right questions are asked of lawbreakers and the right information is given to them. There is no requirement that the information is properly understood, nor that the questions elicit responses that represent the 'true' state of health or the 'real' wishes of detainees. So, for example, lawbreakers who suffer from 'nerves' and 'stress' are commonplace. In the absence of other behavioural or previous history factors which give cause for concern, such symptoms do not usually warrant any reference to the police surgeon unless lawbreakers deserve to be mentally disordered (as discussed in Chapter 4). Moreover, it is often the case that recording details of lawbreakers on their arrival at the police station does not receive custody officers' undivided attention. So, for example, their attention is demanded by a ringing telephone; by attending officers bringing in yet another detainee; by interviewing officers seeking information about or access to their 'prisoner'; and by the 'prisoners' themselves. The detention of any lawbreaker, furthermore, requires regular monitoring

notwithstanding any special circumstances such as intoxication or mental disorder which may place them at extra risk.

Custody officers' attempts to 'get the facts' under such pressures impact upon lawbreakers who may be at a disadvantage in police stations, particularly those who are described in the Mental Health Act 1983 as 'mentally impaired' (see Chapter 3). Lawbreakers are placed under pressures by the limited time and the limited attention that can be given to them by custody officers. They are expected to make their responses to questions and acknowledgements of information supplied as succinct as possible, preferably following a yes/no form. Attempts made by lawbreakers to expand beyond the confines of form filling in order to tell their story (which may or may not be pertinent to the custody record but which lawbreakers clearly believe to be pertinent) are often cut short by custody officers. Such details have to be told later and to someone else, usually emerging during the course of any interview that takes place. It may be noted here that the difficulties experienced by lawbreakers in telling their story (which continues throughout the criminal justice process: for example, as documented by Carlen (1976) in the magistrates' courts and as enshrined in the formal rules which regulate the submission of relevant evidence in the higher courts) may help sustain the presumption held by a number of officers to the effect that most detainees, other than professional villains, have no particular desire to exercise their right to legal advice. Indeed, lawbreakers are often so busy trying to tell their story that they express no properly considered interest in the information that they are given. The response is commonly a perfunctory (and in the context of allowing custody officers to tick the appropriate boxes, a desirable) yes or no before trying again to tell their story. Where lawbreakers fail to comprehend or to waive their legal rights and entitlements upon their initial arrival at police stations, consequences may flow from this which place those lawbreakers at risk (which will be further addressed below in relation to the legal adviser).

This situation is not disadvantageous to custody officers who, if they have done their job properly, will avoid getting into trouble. The exercise of rights (to read the Codes of Practice, to contact a third party and to seek legal advice) disrupts routines and makes it more difficult for custody officers to do their job. So, for example, custody officers have to contact outside parties and, while awaiting their arrival, temporarily postpone further investigation in the face of pressure from interviewing officers who want to get on with their own jobs of questioning lawbreakers in relation to their alleged offences. Moreover, in exercising their entitlement to legal advice, lawbreakers invite lawyers into police stations. A measure of outside supervision of not only custody officers but attending and interviewing

officers doing their job is thereby introduced which may require any or all of them to do (or appear to do) that job exactly by the legal book (rather than the working book), a time consuming process. When extra-ordinarily behaved lawbreakers who are defined as mentally disordered are brought by attending officers into the police station or when custody officers define lawbreakers brought there as mentally disordered, routines are disrupted and outside supervision increases (to doctors, lawyer, appropriate adult, prosecutors) (see Chapter 3 and below). Such disruptions to routines are tolerable only where police officers have an interest in detaining lawbreakers defined as mentally disordered for the purposes of further investigation (see above). Otherwise, officers consider it to be in lawbreakers' 'best interests' and in their own that lawbreakers who deserve to be mentally disordered leave the police station as soon as is possible. And it is the police surgeon who is necessary to their achieving this end.

*(b) 'Call for the doctor'*

Custody officers call for the doctor in order to

- (i) authorise the detention of lawbreakers defined as mentally disordered for the purpose of a continuing investigation - and this will be addressed in the second part of this chapter below.
- (ii) to authorise and put into effect custody officers' decisions to release from the police station extra-ordinarily behaved lawbreakers who deserve to be mentally disordered.

If custody officers are to effect the swift removal of these kinds of lawbreakers, then, in order to cover their backs, they need to release them into the charge of someone else. This requires a medical diagnosis that lawbreakers are mentally disordered and treatable (and this latter condition will inevitably require confirmation by doctors who are in a position to offer such treatment (see Chapter 3)).

I very much rely on the word of the police surgeon because I am not qualified to say who is mentally ill. (Custody Officer: City Station: Respondent No.48)

The following account of doing something to remove extra-ordinarily behaved lawbreakers who deserved to be mentally disordered was given by a custody officer at a busy city station. The account was prefaced by the assertion that

The emphasis should be that police stations should not be a place of safety.(Custody Officer: City Station: Respondent No.48),

and, given the problems that the officer had to sort out, it is unsurprising that he wished the lawbreakers involved anywhere other than 'his' police station.

We recently had a young lady who tried to throw herself off a bridge onto (a major) road because she was depressed. We went to deal with it and she damaged the police car so she was arrested for criminal damage.(Custody Officer: City Station: Respondent No.48)

An initial tendency to treat her as they would a 'normal patient' was countered by her adverse response to her rescuers. Claiming that she was attention seeking (that is, a disreputable and morally guilty person), the attending officers arrested her. However, the extra-ordinary nature of her behaviour was so disturbing that, in order to avoid getting it wrong, she was treated as if she were mentally disordered.

The police surgeon was sent for. He is my main line of defence with people like her. He said that she was not fit to be interviewed or detained so she was released from custody.(Custody Officer: City Station: Respondent No.48)

(the release being from the custody of arrest rather than from the custody of the police station).

Custody officers are crucially dependent on police surgeons when dealing with extra-ordinarily behaved lawbreakers whom they wish removed from police stations. And custody officers treat such lawbreakers as if they were mentally disordered for a number of reasons. So, for example, sufferers from mental health 'problems' which manifest themselves in suicide attempts (or in attention seeking suicide attempts) are likely to reappear in police stations unless these 'problems' are resolved. People who threaten suicide threaten officers who have no qualifications to deal with them with the risk that they will get into trouble if they do the wrong thing and if any harm should befall these lawbreakers as a result. The criminal justice system does not have much to offer in the form of the treatment and cure of 'depression'. Nor can it usually offer long-term incapacitation to those who commit relatively minor criminal damage. Therefore, 'mental disorder' appears to officers to be a viable and preferable alternative. In this case the custody officer had no wish to keep a disturbed if disreputable lawbreaker in detention if alternative arrangements could be made for her removal and treatment/incapacitation.

Medical diagnoses of extra-ordinarily behaved lawbreakers in police stations as mentally disordered *and* as treatable under compulsion tend to be based rather more on the assessment and management of risk rather than on psychiatric symptomatology. According to Robertson et al (1996:177-8),

[t]he 1983 Mental Health Act states that health as well as safety legitimate detention under the civil sections of the Act (s2(2)(b) and s3(2)(c)) but the perceived potential dangerousness to self or others is nevertheless the criterion which is employed by police surgeons and by most of those working at the 'sharp end' of psychiatric care. With acute beds in short supply, as a reason for admission, health will come a poor second to the needs of those considered to be unsafe.

As custody officers have to cover their backs against getting into trouble, so police surgeons must also try to avoid getting it wrong (and this is beyond the ambit of this thesis to address). On the one hand they cannot refuse to take responsibility for doing something with people who present a clear and immediate danger to themselves and to others. On the other they can only take responsibility for doing something with those for whom some appropriate therapeutic disposal is available. In this case the woman volunteered to go into hospital, a resolution to the problem of 'vexatious lawbreakers' which is usually expressed by custody officers as being unsatisfactory. This will be further discussed below.

The custody officer then went on to recount further events which involved the boyfriend of the attempted suicide who, on hearing of her situation, went to the same bridge.

He was ready to jump so we brought him back to the station. When he got here she could hear him shouting and it took us the best part of 3 hours to calm them both down. He was never booked in. It would have been totally the wrong thing. (Custody Officer: City Station: Respondent No.48)

To treat him as if he were a 'normal villain' by detaining him under arrest him would not have been legally 'wrong' since there is little extra-ordinary or lawbreaking behaviour that cannot be made to fit within the definitions of 'public order' offences. It is rather that, for the same reasons given in relation to his girlfriend, to treat him as if he were a 'normal villain' holds out little prospect of getting rid of such a 'vexatious lawbreaker' in the longer term. Not only does the criminal justice system have little to offer but to charge 'vexatious lawbreakers' can get officers into trouble by inviting criticism from the prosecutors for referring weak cases for prosecution. Custody officers see the potential incapacitation that medicalisation has to offer as a possible means of preventing a repeat of the same disruptions to routines and to the safety of all officers as those described by the custody officer above.

When people come in here they are very distressed and irate. It took five of us to hold that man down. We couldn't let him go because he was headbutting the cell wall. We have no facility for somewhere safe to put these people...the biggest problem is constant supervision. A female officer had to stay with the woman and had to go with her to hospital. The gentleman had four police officers to take him to hospital. So it's a matter of manpower and of somewhere to put them that's safe.(Custody Officer: City Station: Respondent No.48)

'Vexatious lawbreakers', therefore, usually deserve to be mentally disordered on pragmatic rather than moral grounds.

The assumption of authority by the medical profession (via the police surgeon) for those lawbreakers that are diagnosed as mentally disordered provides custody officers with justification for what they do next.

Under the Home Office statistics the damage to the police car was cleared up. I had the backing of the police surgeon but I would have done it anyway. (Custody Officer: City Station: Respondent No.48)

The 'backing of the police surgeon' authorises custody officers in more than just 'writing off' the lawbreaking. In taking responsibility for doing something with extra-ordinarily behaved lawbreakers the police surgeon removes similar responsibility from custody officers. Welfare obligations come to an end and, if they have done their job and done it properly, custody officers no longer risk getting into trouble for doing the wrong thing with lawbreakers who are suffering from some degree of impaired mental health.

The assertion made by the officer that he 'would have done it anyway' stands as an apparent contradiction to the previous assertion by a fellow officer that, in medical matters, one cannot act without the authority of the police surgeon. However, the implication that officers are prepared to risk getting into trouble by stepping outside their powers in order to secure what they believe to be lawbreakers just deserts somewhat misleading. There is no legal presumption that all lawbreaking must be investigated or that all lawbreakers should be charged. Rather it is the case that officers are prepared to do no more nor less than is within their discretion to do.

If we've obtained the police surgeon's assessment and so on then we can make the decision ourselves. This is for minor offences such as shoplifting and assault but if it's a serious assault, for instance, then we have to take it to the prosecution service.(Custody Officer: City Station: Respondent No.47)

And even where the alleged offence is sufficiently serious that it must be referred to the

Crown Prosecution Service, officers are well aware that the 'backing of the police surgeon' to divert lawbreakers into treatment is likely to convince prosecutors that initiating criminal proceedings is in no-one's 'best interests'. As one prosecutor pointed out,

There is no point in prosecuting if they are in hospital, no purpose in protecting the public, no point wasting public money. (Principal Crown Prosecutor: Respondent No.53)

Doing one's job becomes problematic when police surgeons fail to diagnose as mentally disordered and treatable the lawbreakers in whom custody officers have no interest and who deserve to be mentally disordered. Powerless to intervene further in medical matters, custody officers have to return some lawbreakers to the unsatisfactory care that awaits them in the community.

I am not happy if the police surgeon says that someone is not mentally ill. I'm not happy about turning them out of the station so I go out of my way to make sure that they are taken by car to their family or to their friends or such. The police surgeon usually says to them 'get to see your own doctor the next day' so you need to make sure that they do. (Custody Officer: City Station: Respondent No.46)

Acting under what the officer referred to as a 'moral obligation' to ensure, in so far as possible, these lawbreakers' 'best interests' is equally to act to ensure, in so far as is possible, that they do not return to the police station. To do nothing is to guarantee that

They come back because they have nowhere to go when they need help. (Custody Officer: City Station: Respondent No.46)

However, and for most of those who are 'rejected' by the police surgeon, there remains only one course open to custody officers.

If they have committed an offence, then in the absence of anything else we put them forward for prosecution. (Custody Officer: City Station: Respondent No.51)

*(c) 'Do as the experts say'*

Mental disorder apparently offers the prospect of getting away with it to the morally innocent and of incapacitation (or even cure) to the 'vexatious' and custody officers treat extra-ordinarily behaved lawbreakers accordingly. Where members of the medical profession fail to concur in officers' diagnoses of mental disorder and where no other option is available (see above), custody officers must justify their decision to continue the detention



of lawbreakers whom they have no wish to detain. In other words, custody officers have to justify treating lawbreakers who deserve to be 'patients' as if they were 'villains' and creating the risk of their being punished rather than treated.

The legal justification for such a course of action does not present officers with any fundamental difficulties. While there is no legal presumption that lawbreakers whom officers treat as mentally disordered should be detained for the purposes of further investigation, there is no presumption that they should not. People who have allegedly committed criminal offences may equally lawfully be detained in police stations as be allowed to leave them without any formal action. What is less easy to justify is that, as a result of their taking action to avoid getting it wrong and getting into trouble, custody officers may be responsible for lawbreakers failing to get their just deserts. And a significant reason that custody officers (and indeed all officers) find such moral justifications necessary is that their job involves dealing with lawbreakers who deserve to be mentally disordered

face-to-face, or at least be so close to them as to be unable to avoid, or even to suppress, visualizing the effects their actions might have upon them (Bauman,1989:196)

Therefore, and because they have not been able to shift the 'functional' burden of responsibility for doing something with these lawbreakers to the medical profession, officers shift to doctors the 'moral' burden of responsibility for having done nothing. If justice does not get done and, moreover, if some harm should come to 'mentally disordered' lawbreakers (such as receiving a prison sentence) as a result of them being treated as if they were villains rather than as if they were patients, then it is doctors rather than police officers who are to blame.

Custody officers morally distance themselves from the diagnoses of doctors whom they believe to be professionally obligated to do something and yet who do nothing.

Doctors come into the station and these people, they know who they are, they know the date, they know who won the football match yesterday and all the rest of it so it's not mental health, it's another issue, a side issue. I mean, we get people who we genuinely think should be separated from the public but the doctors say, 'well, it's not mental health, it's learning difficulties' or it's some other category and that's how far they'll go on it (Custody Officer: City Station: Respondent No.33)

I have dealt with numerous cases where the police surgeon has been called under s136. In about 10% of cases police surgeons say the person is not mentally ill. They will not put their necks on the line and call out the consultant psychiatrist.(Custody Officer: City Station: Respondent No.47)

Custody officers further stress that, while others may have done nothing, they themselves have done all that it is in their power to do.

We have to be happy that they are OK....the CO has done everything that he can do. But when you see some of the people that we have to deal with, well, you wonder how bad must they be before something is done. But as far as we are concerned, their welfare is paramount.(Custody Officer: City Station: Respondent No.17)

And because custody officers have no professional authority in the field of 'mental disorder',

[f]or those who do not possess the know-how, responsible action means following the advice of the experts. In the process, personal responsibility dissolves in the abstract authority of technical know-how (Bauman,1989:196).

Continued detention of lawbreakers who (on moral grounds) should not be detained becomes the responsibility of the doctors and not police officers.

I rely on their expertise...I have to do as the experts say.(Custody Officer: City Station: Respondent No.48)

However, assertions by officers that they do as the experts say cannot be taken to mean that they concur with what the experts say.

We have a bloke in who says that there's a devil on his back. He isn't sectioned, so how bad do they have to be? He's always playing religious tapes, he's off his head, he can feel the devil on his shoulder and when he comes in he's ducking about because of the devil being on his shoulder. One day when he was in the doctor was standing just behind me and I said to him, 'this one's for the funny farm,' but the doctor said, 'he's alright'.(Custody Officer: City Station: Respondent No.51)

As explained above, custody officers treat extra-ordinarily behaved lawbreakers as deserving of mental disorder because they deserve its effects. That is, moral justice requires that the morally innocent should be diverted from the criminal process to the least coercive of therapeutic conditions and that the 'vexatious' undergo long-term treatment (incapacitation) to ameliorate their problems. Therefore, and as far as custody officers are concerned, it serves little useful purpose if doctors diagnose lawbreakers as mentally disordered but untreatable (see Chapter 3). Similar reservations are expressed where lawbreakers are persuaded to become voluntary patients. In respect of the attempted suicides discussed in the previous section, the custody officer who dealt with them explained the problem.

Yesterday she went to (the local psychiatric hospital) and he agreed to go as well. It's marvellous what you can do if people agree but if he goes to (the hospital) and then he walks out, what then?.(Custody Officer: City Station: Respondent No.48)

However, and in an apparent contradiction of this statement, the same officer went on to explain that

Normally, even if the doctor says he cannot section people, then he manages to persuade people that it's best for them to go to hospital. If they flatly refuse, then he can only section them.(Custody Officer: City Station: Respondent No.48)

This apparent contradiction can be reconciled by a brief examination of the kinds of extra-ordinarily behaved lawbreakers that custody officers would wish doctors to remove from their police stations. 'Normal patients' (as discussed in Chapter 4) whose behaviour is sufficiently bizarre or abnormal that doctors diagnose it as mentally disordered and as presenting a danger to themselves and to others (see above) are lawbreakers who will almost inevitably be compulsorily hospitalised. These are the lawbreakers to whom the officer (above) refers. Consequently, it is in relation to these lawbreakers that police officers agree with doctors' diagnoses of mental disorder and its treatment. The fact that doctors can do what police officers want them to do with some of the extra-ordinarily behaved raises expectations that they will be able to do something with all such lawbreakers. However, the 'professional' distance between police officers and doctors gives rise to an imperfect knowledge and understanding of the extent of doctors' legal and clinical authority. Doctors have no power under the Mental Health Act 1983 to 'section' the 'safe', the nuisances, the inadequates, the drunk and the drugged and so on. These kinds of lawbreakers also await diagnosis in police stations and are, in fact, the 'vexatious', the 'victimised' and the 'vulnerable' who were described in Chapter 4. Since their extra-ordinary behaviour is far from inevitably of the kind that constitutes them as clinically 'mentally disordered' and 'treatable' or 'treatable under compulsion', doctors cannot reach the diagnoses that custody officers want. Nor can doctors offer a therapeutic disposal where the appropriate facilities are unavailable (for example, secure accommodation, treatment programmes for alcohol and drug addictions and so on - see discussions on community policies in Chapter 3). One officer summed up the opinion expressed by many of his colleagues;

Some doctors won't accept people. It seems they are too much trouble.(Police Constable: City Station: Respondent No.18)

Where doctors fail to diagnose as mentally disordered all of the lawbreakers whom officers have treated as if they were mentally disordered, officers are often reluctant to accept that the deserving must now be treated as if they were villains. Officers, therefore, continue to define lawbreakers in terms of the symbolic and functional effects that have been discussed throughout this thesis (that is, in terms of their moral innocence and deservedness of mental disorder). Consequently, and despite their having to detain those whom they have no wish to detain, officers continue in their attempts to get these lawbreakers their just deserts.

## **II. DOING SOMETHING WITH EXTRA-ORDINARILY BEHAVED LAWBREAKERS INSIDE THE POLICE STATION: OR 'FAIR PLAY'**

Extra-ordinarily behaved lawbreakers who deserve to be mentally disordered and in whom police officers have no interest are representative of some but not all lawbreakers who must be detained in police stations for the purposes of further investigation. Although officers must treat morally innocent and respectable lawbreakers as if they were 'villains', it is not impossible that custody officers may be able to divert such lawbreakers away from the criminal justice process and the possibility of undeserved punishment. Moreover, such a course of action does not necessarily depend upon it being authorised by a doctor (although a medical opinion may be sought).

If they have committed an offence then there is a problem if you don't want to see them prosecuted. You can say that there isn't sufficient evidence to charge. It might be that the complainant declines to prosecute or you can talk to the complainant and explain the situation to them. It might be that they only committed a minor offence and you can avoid prosecuting them because it is only minor. If they don't fall into any of these categories then you can't overlook it, you can't overlook the offence that they have committed. Sometimes you can consider cautions...the CO can see the inspector and discuss matters. It's a matter of shared responsibility when you can't overlook it. (Custody Officer: City Station: Respondent No.45)

(And the issue of 'shared responsibility' will be considered below).

Where custody officers are unable to 'overlook the offence', then to treat the morally innocent as 'mentally disordered' becomes an important means of attempting to secure their just deserts. A medical diagnosis of mental disorder made by a doctor in the police station may, as far as the prosecution are concerned, weigh against any continuation of criminal proceedings. Further, a medical diagnosis of mental disorder once made may follow lawbreakers through the criminal justice system and may ameliorate the punitive nature of any eventual sentence that they may receive in the courts.

The other kinds of extra-ordinarily behaved lawbreakers who must be detained in police stations are the morally guilty and disreputable who, as already explained, do not deserve to be mentally disordered. Their behaviour is sufficiently extra-ordinary that they must be treated by officers as if they are 'mentally disordered' in order that these officers avoid getting into trouble. Because such lawbreakers deserve to be punished a medical diagnosis of mental disorder is not necessarily to be welcomed and officers do attempt to deter its being made. If such a diagnosis is made, officers are concerned that 'mental disorder' does not diminish the gravity of the lawbreaking which would allow the undeserving to get away with it.

Notwithstanding the 'moral' distinctions between extra-ordinarily behaved lawbreakers who must be detained in police stations and that have so far been described in this chapter, officers are unable to draw any 'legal' distinctions between them. All lawbreakers whom officers treat as 'mentally disordered' must be afforded all of the safeguards contained in the rules which regulate the conditions of detention of the 'mentally disordered' (that is, the Police and Criminal Evidence Act 1984 and its Codes of Practice discussed in Chapter 3).

The priority is the suspects' welfare and so you ensure that PACE is complied with, for example, calling in the appropriate adult...so fair play prevails.(Custody Officer: City Station: Respondent No.23)

'Fair play' means playing by the legal rules and protects more than the 'best interests' of lawbreakers.

The priority has got to be the supervision of the interview and all the proceedings because there's always jeopardy, I mean you're always in jeopardy of having the evidence thrown out by the CPS or in court. You have to ensure fair play.(Detective Sergeant: Rural Station: Respondent No.34)

'Fair play', therefore, serves the 'best interests' of police and lawbreakers alike. However, while playing fair keeps officers out of the trouble that would follow if they broke the rules in order to get lawbreakers their just deserts (for example, the loss of evidence cited above), playing fair does create other and different risks for officers.

Officers want lawbreakers to get their just deserts and a part of these 'deserts' are the safeguards that the law affords to 'mentally disordered' lawbreakers. It follows that those who deserve to be mentally disordered deserve to benefit from these safeguards because they are 'genuinely' entitled to benefit from them. However, where the undeserving are suspected of trying to get away with it by behaving in extra-ordinary ways, this is not the

case. If officers do the right thing and observe the rules of law there is a risk that the morally innocent will be punished and the morally guilty get away with it. Furthermore, playing fair threatens officers' successfully doing their job. In the context of lawbreakers' detention currently under discussion, this job is one of getting at the 'truth'. More specifically, and for the purposes of this thesis, the 'truth' is sought through the interviewing and questioning of lawbreakers (see Chapter 3). It is during the course of the interview and in the preparations that lead up to it that officers attempt to get moral justice done.

#### **(i) 'Prepare for the Interview'**

If officers are to play by the rules then the interview must be conducted in accordance with the rules which regulate the questioning of 'mentally disordered suspects' (as indicated above and in Chapter 3). Officers' training manuals make clear that interviews are conversations structured by rules of law and procedure and there is a presumption that interviewees can behave in a number, but only a limited number, of ways. According to *A Guide To Interviewing* (1992:4) these are that the suspect will remain silent; only answer selective questions; totally deny the allegation; tell lies; tell the truth; not stop talking. As explained in Chapter 4, telling the truth can be as extra-ordinary behaviour as telling lies and talking too much as remaining silent.

Interviews pose risks to the extra-ordinarily behaved lawbreakers who take part in them.

The mentally disordered, the mentally ill, someone who is obviously not quite capable of thinking for themselves, they might trip themselves up...they might say things totally innocently and they don't realise the importance of what they are saying. (Detective Constable: City Station: Respondent No.22)

Consequently, if officers are to play fair, they must ensure that these kinds of lawbreakers are afforded the presence of an appropriate adult and that they are informed of the entitlement to a legal adviser. One or both of these people will then be present at the interview. However, their presence makes the job of the officer (or officers) who conducts that interview (that is, the attending officer or the investigating officer) more difficult. The job of the interviewing officer is to get at the 'truth'.

I would say that it's to give the suspect an opportunity to put his side of the story. It's to obtain evidence. (Detective Sergeant: City Station: Respondent No.20)

Interviews must, therefore, be planned and structured conversations which take account of

all of the expected ways (above) in which an interviewee can behave.

As far as I'm concerned, the purpose is to identify the points that you are going to highlight which have emerged as a result of inquiries into the situation and to ask specific questions about them. As well, you are going to present yourself to the suspect, to get a rapport. You always prepare for the interview. Before you start you make sure you cover what points to prove in relation to the law as well as those which have resulted from your inquiries. (Detective Sergeant: Rural Station: Respondent No.34)

Or, as explained by Goffman (1967(a):9)

By entering a situation in which he [sic] is given a face to maintain, a person takes on the responsibility of standing over the flow of events...He must ensure that a particular *expressive order* is sustained - an order that regulates the flow of events...so that anything that appears to be expressed by them will be consistent with his face.(Goffman,1967(a):9)

However, there are lawbreakers who behave in extra-ordinary ways in the interview.

The mentally disordered are difficult because you plan the interview beforehand and so the reason it's difficult is because they are not answering questions that you are asking, particularly if it's a serious offence. You are asking them questions and then they go off at a tangent. (Detective Sergeant: City Station: Respondent No.20)

Where lawbreakers confound officers' expectations, that is, they do not play by the extra-legal rules of the interview (see Chapter 4), officers risk losing face. As Goffman (1967(a):37) points out,

when a person volunteers a statement or message...he commits himself and those he addresses, and in a sense places everyone present in jeopardy. By saying something, the speaker opens himself up to the possibility that the intended recipients will affront him by not listening or will think him forward, foolish, or offensive in what he has said.

The potential for loss of face can be exacerbated by the presence of an appropriate adult and/or legal adviser.

The more people there are in the interview, the more difficult it is. So you have the solicitor and an appropriate adult and it makes it more difficult because they can interrupt the interview, they can ask to stop it.(Detective Constable: Rural Station: Respondent No.44)

Not only, therefore, must officers be on guard against their losing face and getting it wrong before 'outsiders' in the police station. There is also the possibility that these 'outsiders', in offering some measure of assistance both to lawbreakers who do deserve it and to those who do not, may tip the scales in their favour and prevent the truth from coming out (for

example, by advising a 'guilty' client to remain silent - see Chapter 3 and below). In other words, 'outsiders' whose presence in the police station results from officers playing by the rules, may prevent officers from doing their job properly and put the doing of moral justice at risk. Therefore, officers ensure not fair play but every appearance of fair play. Officers cannot arbitrarily refuse lawbreakers the presence of an appropriate adult and a legal adviser. However, it is possible for officers to 'legally' exclude one or both of these people (see Chapter 3 and below). Even where 'legal' exclusion is not possible officers can and do take steps to get these 'outsiders' on their own side rather than on the side of the lawbreakers they have come to the police station to assist. The process of 'getting them on side' can be described as follows:

when an individual considers taking a course of action he is likely to hold off until he has imagined the consequences in his mind of his action for others involved, their likely response to this consequence and the bearing of this response on his own designs. He then modifies his action so that it now incorporates that which he calculates will usefully modify the others generated response. (Goffman, 1970:47)

This means getting 'outsiders' to do the 'something' with extra-ordinarily behaved lawbreakers that officers want them to do. In other words,

If you've got someone in custody, well, you can see that they have got a mental impairment and so you think that you can direct the result. (Police Constable: City Station: Respondent No.31)

'Directing the result' will be described more fully below in relation to the appropriate adult, the legal adviser and the prosecutor). However, officers also attempt to 'direct the result' in their efforts to shift responsibility elsewhere for anything that may go wrong in the future as a result of lawbreakers' detention in the present. It has been suggested in the earlier part of these discussions that the interview poses risks to both interviewees and officers alike. As far as officers are concerned, the risk is not that 'mentally disordered' lawbreakers will admit to something that they did or did not do. Rather it is that they do so when in some mental state that casts doubt upon their very fitness to be detained and questioned (or in the absence of appropriate safeguards - admissions made in the absence of an appropriate adult or legal adviser will be addressed later).

## **(ii) 'Get the Police Surgeon on Side'**

While it is the legal responsibility of custody officers to authorise the continued detention of lawbreakers, medical authorisation must be sought where these officers are treating



lawbreakers as or as if they were mentally disordered. If custody officers are to avoid getting into trouble for detaining lawbreakers whose extra-ordinary behaviour may later cast doubt upon the appropriateness of that detention, they must have the authority of the police surgeon that such lawbreakers are fit to be detained and fit to be interviewed.

The mental side has to take priority to the criminal side. We consult with the CPS if necessary but it's more usually with the doctor.(Custody Officer: City Station: Respondent No.33)

(and later consultation with the Crown Prosecution Service will be discussed below)

Since custody officers have played by the rules and called for a medical assessment, they then have to take the word of the police surgeon that lawbreakers are fit or unfit to be detained and interviewed.

I'm no expert...I mean, I'm not capable of saying that someone is mentally disordered.(Custody Officer: Rural Station: Respondent No.40)

It is because officers are not experts that they have to accept that police surgeons know best.

Doctors say, 'I am not entirely happy...that they are fit to be interviewed...that they have got the right tablets...that they have given the right psychiatric history'...so they say that they will contact the person's psychiatrist on their behalf.(Custody Officer: City Station: Respondent No. 51)

It is because police surgeons know best that custody officers have to do as they say.

Most police surgeons are very good. I find that whatever they recommend I will do. So if they say they are not fit to be detained or interviewed then that's that.(Custody Officer: City Station: Respondent No.48)

However, the situation is not so simple as custody officers would suggest. A distinction lies between playing fair and appearing to play fair. Extra-ordinarily behaved lawbreakers are medically diagnosed as unfit to be detained and interviewed where they meet the criteria for civil detention under the Mental Health Act 1983 (that is, the 'section') (Palmer,1996:639), as discussed in Chapter 3. If they are deemed by the police surgeon to be so dangerous as to require sectioning then they are likely to be very disordered indeed. If this is the case then to detain such lawbreakers for the purposes of an interview would be fruitless in terms of its evidential value and the risks of physical and psychological harm posed to all involved. In such circumstances it is unlikely that custody officers would take issue with the decision of

the police surgeon.

However, what police surgeons decide to do with extra-ordinarily behaved lawbreakers and what custody officers want done with them do not always correspond with each other. As discussed earlier, custody officers do not experience any real difficulties with police surgeons' decisions not to authorise the detention and interview of those whom custody officers have no interest in detaining. It is similarly the case where police surgeons do not authorise the detention and interview of those in whom custody officers do have an interest. If lawbreakers are unfit to be detained then, if necessary, the investigation can take its course once lawbreakers have undergone treatment. Police surgeons' delaying the interview of lawbreakers who are fit to be detained does make inroads into the usual detention period of 24 hours. Nevertheless, this can be overcome in more grave cases where it is possible for senior officers and magistrates to make extensions to this time limit.

The difficulty does arise, however, where police surgeons authorise the detention and interview of lawbreakers whom custody officers have no wish to detain and for whom they seek a medical diversion from the further criminal justice process. Such lawbreakers fall into the categories of the 'vexatious', the 'victimised' and the 'vulnerable' discussed in Chapter 4. Despite the police surgeons' diagnosing them as fit to be detained and interviewed, custody officers do not cease to perceive their behaviour as extra-ordinary and as making them the responsibility of someone else. Nor does this diagnosis cease to give rise to concerns that these lawbreakers may harm themselves or others while in detention. Nor do custody officers cease to define these lawbreakers as deserving of the symbolic and functional effects of mental disorder. In order to secure their just deserts, custody officers attempt to persuade police surgeons to do what *they* want them to do while giving every appearance that police surgeons are doing what *they* want to do. Custody officers, therefore, lay emphasis upon the clinical objectivity of police surgeons' assessments.

There is a rota of 4 doctors. They are all independent minded people. They won't always just do what we would like them to, whatever would suit us. Although they are police doctors they are doctors first. (Custody Officer: City Station: Respondent No.33)

This objectivity is not compromised by the formal relationship that exists between police officers and police surgeons. While police surgeons are GPs who perform their duties on behalf of the police on a part-time basis they are not under the control of the police. Nevertheless, clinical objectivity can be compromised by the working relationship that exists between the two.

The police surgeon/police relationship is relaxed. There are no barriers. He knows what we want although he will not always go along with it. He will say that we are wrong and I will bow down to his greater knowledge. I know what the police surgeon wants to know.(Custody Officer: City Station: Respondent No.51)

Therefore, it is no doubt the case that

[w]hether an individual is detained and/or interviewed, referred for further consultation, specialist evaluation or treatment, can be dependent solely upon the judgement of the police surgeon (Bradshaw et al,1993:73).

However, as a number of custody officers pointed out, upon their arrival at the police station police surgeons do ask about and/or custody officers do explain the course of action that they (the custody officers) propose to take in respect of lawbreakers. Police surgeons are often made aware of the fact that, on the one hand, charges will be brought despite lawbreakers' medical conditions or, that on the other, custody officers have no desire to proceed further on account of such medical conditions. Clinical objectivity can, therefore, become compromised by complicity.

As far as the police are concerned, there is no doubt about 'whose side' the Police Surgeon is on or should be on (Nemitz and Bean, 1994:164).

This claim upon the police surgeon does not take the form of some explicit demand that they fall in with officers' wishes but rather as an expectation that arises in the context of their working relationship.

Should police surgeons be unable to take responsibility for those whom custody officers do not wish to detain then these same officers are not inevitably content to 'take their word for it' but rather take steps to exercise persuasion.

There was a woman who came in and she was cuckoo. She was not right. She was an ex-patient of one of the police surgeons. She had set fire to her parents' house. I spoke to this doctor because I thought that she wasn't right. Rather than the doctor come out he spoke on his mobile. He said that he knew the woman, that she had a psychiatric history but that she was purely an attention seeker so she could be interviewed and charged and sent to court. Her solicitor said that in her opinion she was now worse than she had ever been before and so in my opinion it was waste of time to interview and charge her because she had a defence. I asked the police surgeon to come out and assess her and he said that in fact she was worse. He spoke to a psychiatrist who advised us to charge her and ask for a remand into psychiatric care. This was because she had a habit of agreeing to go into hospital voluntarily, getting out of the offence and then running away but on remand she could not do that.(Custody Officer: City Station: Respondent No.52)

### **(iii) 'Get the Appropriate Adult on Side'**

As explained in Chapter 3, the presence of an appropriate adult is required where officers suspect or are told in good faith that extra-ordinarily behaved lawbreakers are mentally disordered (para. 1.4, Code C of the Police and Criminal Evidence Act 1984). The job of the appropriate adult is generally one of looking to the lawbreakers' best interests. But playing fair and complying with these legal requirements threatens officers with the possibility that they might get it wrong in the presence of 'outsiders' in the police station with a consequent loss of face (see above). Not least amongst the challenges to officers' authority is the risk that appropriate adults should dictate or, at the least, interfere with the course of investigations inside the police station (see further below). Further and more importantly, playing fair threatens to subvert the course of moral justice. To call an appropriate adult to the police station is, in effect, to assert that lawbreakers are mentally disordered and are vulnerable to police procedures on that account. The presence of the appropriate adult constitutes evidence of 'mental disorder' (which will be shared with the Crown Prosecution Service, lawbreakers' legal advisers and the courts) which may be persuasive in their achieving a treatment disposal.

Of all the lawbreakers whom officers treat as mentally disordered, only those who deserve to be mentally disordered deserve an appropriate adult. However, officers must reconcile just deserts with keeping out of trouble. Confession evidence (whether 'true' or not) is not admissible where it has been obtained as a result of oppression or something said or done which, given all of the circumstances, would render it unreliable (s76(2)(a) and (b) of the Police and Criminal Evidence Act 1984 respectively). Such evidence can also be excluded where, given all of the circumstances, it would have an adverse effect on the fairness of the proceedings (s78 of the Police and Criminal Evidence Act 1984). Breaches of the 1984 Act and its Codes of Practice can and do result in what would otherwise be strong evidence of lawbreakers' guilt being excluded. To this end, officers cannot arbitrarily deny undeserving lawbreakers whom they treat as if they were mentally disordered the safeguard of the appropriate adult. To do so would be to cast doubt upon the reliability of any evidence obtained under such circumstances and potentially attract criticism from prosecutors and courts alike should any future case against such lawbreakers collapse as a result. Officers must, therefore, play fair with those who deserve to be mentally disordered and appear to play fair with those who do not.

Where police surgeons state that extra-ordinarily behaved lawbreakers who do not deserve to be mentally disordered are fit to be detained and interviewed on the grounds that

they are not mentally disordered, there is no requirement that an appropriate adult be called by officers.

Doctors say whether they are fit to be detained and fit to be interviewed. If they say that then you can deal with the person in the same way as you can deal with anyone else. (Custody Officer: City Station: Respondent No.46)

On the other hand, and irrespective of whether lawbreakers who deserve to be mentally disordered have been examined by the police surgeon or not, custody officers can and do justify calling in an appropriate adult on the grounds that they suspect such lawbreakers to be mentally disordered or that they are incapable of understanding the significance of the interview process (para. 1.4, Code C of the Police and Criminal Evidence Act 1984).

In cases of outlandish mental disorder you're not considering an interview anyway. Where somebody may be a bit simple, well, in effect they become a juvenile. I always call the appropriate adult where anyone appears not to understand what is going on, the questions that are put to him. (Custody Officer: Rural Station: Respondent No.38)

Interviewing officers are similarly able to justify 'overlooking' any extra-ordinary behaviour that may indicate that undeserving lawbreakers may be 'mentally disordered' and so in need of an appropriate adult.

Generally mental disorder is picked up before the interview so it wouldn't be necessary for me to get an appropriate adult. The (arresting) officer or the CO would have picked it up from physical or other signs. I have started an interview and recommended that person get a solicitor but not an appropriate adult because CO has already done that. (Detective Constable: Rural Station: Respondent No.35)

The (custody) sergeant is in charge. He is the one who will decide whether they are mentally disordered or whether they are on drugs or whatever it is that is affecting them. If it is due to drugs you don't need the appropriate adult but it's up to the CO.(Detective Constable: Rural Station: Respondent No.36)

Since it is the custody officers' job to ensure that an appropriate adult is present, it is they and not interviewing officers who then bear the responsibility for any trouble that may result from lawbreakers who later come to be diagnosed as mentally disordered being deprived of this safeguard.

On the other hand, interviewing officers are quite able to recognise the circumstances in which the presence of an appropriate adult is required and to act accordingly.

There are other people who are vulnerable who need somebody there with them who might be

manipulated by officers. I'm thinking of elderly people...who live alone...they can't communicate but they don't want the family to know that they've committed an offence...there is the shame of these allegations for the elderly...they think there is some shame to be involved with a solicitor so I will usually get such as a social worker to be with them. I think it's the right thing to do even though these people are not actually defined under PACE. I'm looking at the best for the suspect, the best interests of an elderly suspect. We want to be ultra-fair to them and if we are then no-one can point the finger at the police. (Detective Sergeant: Rural Station: Respondent No.34)

If officers treat these morally innocent and respectable lawbreakers as if they were mentally disordered, then the prosecutors (and the courts) may also be persuaded to treat them as mentally disordered and thus avoid taking the more punitive of measures against them.

Moreover, it is in the 'best interests' of police officers to look to the 'best interests' of these kinds of 'vulnerable lawbreakers'. Age more advanced than that usually possessed by the 'normal villain' is no bar to charge, to prosecution and to trial. Yet it is because elderly lawbreakers are out of the ordinary that their cases may be more closely examined than those of 'normal villains'. Officers wish to avoid any suggestion that there has been anything other than fair play in the course of their detention in the police station. To this end,

The problems may be to convince the suspect that he needs a person with him. He might not believe that he is vulnerable.(Custody Officer: City Station: Respondent No.17)

And, as already discussed, it is integral to officers' 'best interests' that, as far as it is possible to do so, they should avoid taking sole responsibility in the present for any actions that may lead to unfavourable outcomes for the extra-ordinarily behaved lawbreaker in the future. This is accomplished by the sharing of responsibility with someone else.

I get the appropriate adult out to corroborate my actions.(Detective Constable: Rural Station: Respondent No.44)

The calling of an appropriate adult is more than a course of action which keeps officers out of trouble. Acting in accordance with the rules (that is, Code C of the Police and Criminal Evidence Act 1984) means that legal justice gets done. However, the doing of legal justice and the doing of moral justice are not one and the same thing. The latter is served not merely by calling an appropriate adult but by calling the appropriate adult who is best able, in all of the circumstances, to assist officers in getting lawbreakers their just deserts.

As discussed in Chapter 3, police officers expect that all extra-ordinarily behaved lawbreakers, deserving of the effects of mental disorder or otherwise, will tell them the truth and admit to their lawbreaking. However, police interviews with lawbreakers are not

opportunities for some 'objective' truth to come out but rather for officers to get at versions (or constructions) of the truth. The admissions that officers want from extra-ordinarily behaved lawbreakers who do not deserve to be mentally disordered are those whose content is as damaging to their chances of 'getting away with it' as possible. Such lawbreakers, therefore, must present themselves either as knowing and rational beings who are wholly responsible for their lawbreaking and consequently punishable or as possessing such potential to cause serious harm to persons and/or property that they require the most punitive effects of mental disorder (see Chapter 2). Conversely, admissions from those who deserve to be mentally disordered must present themselves as people who are irrational and ill, who are not responsible for their lawbreaking and are consequently excusable (again, see Chapter 2; also Chapter 4 on 'vexatious', 'victimised' and 'vulnerable' lawbreakers). The task of the appropriate adult is not to draw out the kinds of admissions that officers need to get moral justice done. It is rather one of facilitating communication itself. The interview techniques employed by officers can draw out the information necessary to construct lawbreakers in the most favourable or unfavourable light. As one custody officer put it,

You need co-operation from the detained person within their limitations so when you have got an appropriate adult you need that appropriate adult to smooth the way through. (Custody Officer: City Station: Respondent No.33)

The appropriate adult called to the police station will almost invariably be a relative of the lawbreaker or a social worker. (This decision is made at the discretion of the custody officer who, despite being barred from the process of investigation, may use the opportunity to exert some influence over the course of the interview). Officers do not have to justify calling an appropriate adult to be present during the investigation of lawbreakers whom they are treating as mentally disordered. What they do have to justify is calling the appropriate adult who is most appropriate in the interests of getting moral justice done. And the justifications for electing relatives on the one hand or social workers on the other are made in accordance with lawbreakers' 'best interests'.

Appropriate adults are required to advise lawbreakers, to observe whether the interview is being conducted fairly and properly and to facilitate communication (para. 11 Code C of the Police and Criminal Evidence Act 1984). This demands that they take an active part in the interview.

Appropriate adults are told that theirs is not a passive role because if you brought that type of person in on interviews you may prevent the truth from coming out. (Detective Sergeant: City

Station: Respondent No.29)

Yet they cannot play so active a part that it works against the 'best interests' of officers (and, by implication, the 'best interests' of lawbreakers).

If you bring in relatives they may be more obstructive to the inquiry, to the solicitor and so on. It's better to have someone experienced and that's social services. The person has got to answer the questions themselves (sic) and you don't want someone to butt in and answer questions for them. (Detective Constable: City Station: Respondent No.30)

As fellow professionals, social workers are claimed by officers to be impartial and objective and so better able to assist lawbreakers by making the interview process as smooth and as orderly as possible. In other words, to do the job of the appropriate adult properly. However,

There's a problem if it's out of hours. Then we normally struggle if it's an emergency. It's the sheer volume of work that they have, not because they don't want to come out. (Custody Officer: City Station: respondent No.46)

(and Pearse and Gudjonssen (1996:103) estimate that waiting times for social workers average three but can extend to up to 18 hours). Long waits for social workers are claimed by officers as disadvantageous to the mental state of those whom they believe to suffer from disturbed mental health (that is, those who deserve to be mentally disordered) and so justify calling a relative. Yet social workers who cannot arrive for hours can be the most appropriate of adults for lawbreakers whom officers believe to be 'feigning' mental disorder in order to get away with it (that is, those who do not deserve to be mentally disordered). Long waits in police stations with the attendant uncertainty of outcome can often predispose lawbreakers to co-operate with officers in the interview in order 'to get it over and done with'. Nevertheless, and if it is in the interests of lawbreakers' just deserts to do so, officers can justify the risks posed by calling social workers with reference to the inability of relatives to look after their family members' 'best interests'.

Parents don't always understand what they are there for. They might think somebody understands what's going on, think they are telling the truth and they don't realise that the person is saying things because they are frightened or they are trying to help us. They don't know that they are there to protect that person. Sometimes the whole family is 'mentally disordered' so the parent is no use...so you get the social worker. (Custody Officer: City Station: Respondent No.17)

The capacity of the appropriate adult to 'protect' extra-ordinarily behaved lawbreakers is important.



Obviously people need a comforting relative with them while they are being questioned...if they are not comfortable then they don't answer my questions so if they have someone there with them it makes them feel better.(Detective Sergeant: City Station: Respondent No.20)

In order to look to their 'best interests', appropriate adults need to do more than open up and maintain lines of communication between lawbreakers and officers.

You tell the appropriate adult that they must look after the person. (Detective Sergeant: City Station: Respondent No.20)

To 'look after the person' is to protect lawbreakers from any exercise of authority on the part of officers that, given the lawbreakers' 'mental disorder', could be interpreted by others of the criminal justice system as justifying the exclusion of any resultant confession evidence (see above). Therefore, and for example, if appropriate adults are to properly 'look after the person' they must be prepared to interrupt the interview should the questioning become too forceful. Similarly, they must be confident in exercising lawbreakers' rights and entitlements (for example, to contact a third party and a legal adviser) on their behalf.

However, the lawbreakers who deserve appropriate adults who are capable of doing their job properly are those who deserve an appropriate adult (see above). As noted above, officers' backs are covered by their calling appropriate adults and informing them of the job that they must do. They are under no legal obligation to call appropriate adults who are capable of doing the job properly (although they cannot call parents who are involved in the alleged offence) nor to inform them how the job is done. Where lawbreakers do not deserve appropriate adults, officers can attempt to ensure that they do not get away with it while maintaining the appearance of fair play. Officers perceive relatives to be less 'competent' than social workers in their ability to 'look after the person'. Furthermore, and according to Zander (1990:167), there is a good possibility that relatives will side with the police rather than the lawbreakers. In so doing, these appropriate adults may help to do officers' jobs and 'persuade' undeserving lawbreakers to make admissions about their responsibility and punishability in circumstances which could be considered as morally but not legally 'unfair'.

#### **(iv) 'Get the Legal Adviser on Side'**

The position in respect of lawbreakers and legal advisers differs somewhat from that of their position in respect of appropriate adults. Playing fair does not require custody officers to call legal advisers to the police station but merely to inform lawbreakers of their entitlement to

free legal advice in the police station (s58 of the Police and Criminal Evidence Act 1984 and see Chapter 3). A custody officer summed up this notion of playing fair as follows;

If you consider that they are mentally ill then you have to consider if they know what you are asking. Then you ought to get the appropriate adult, a relative or social services, and then you are giving the appropriate adult the option of exercising their legal rights. It's unfair to offer legal advice if they don't understand what's being said and then they end up being prosecuted. The person must understand what's happening. If the person wants a solicitor they must have one.(Custody Officer: City Station: Respondent No.46)

Legal justice is done, therefore, where lawbreakers (or their appropriate adults) exercise their entitlement to legal advice. Equally, legal justice is done should they elect not to do so. However, and as repeatedly asserted throughout this chapter, the doing of legal justice and the doing of moral justice are not one and the same thing.

Legal advisers (that is, solicitors or their clerks or legal executives - see Chapter 3) have no specific remit with regard to extra-ordinarily behaved lawbreakers whom officers are treating as mentally disordered. The task of legal advisers is to treat these kinds of clients as they would any others and consequently to act in their 'best interests'. And, as far as officers are concerned, acting in these 'best interests' amounts to enabling their clients to get away with it.

It's a fundamental problem. You need to find the truth not whether they are guilty or not guilty but the defence solicitors think that their sole job is to get the person out.(Custody Officer: City Station: Respondent No.33)

Officers, as explained above, want no more than that lawbreakers should tell the truth during the interview. If legal advisers obstruct the interview and thereby prevent the truth from coming out then they jeopardise moral justice being done.

The system is no comment and solicitors encourage them not to say anything, to make no comment.(Detective Constable: Respondent No.36)

Moreover, officers' interest in the truth coming out is not limited to the interview. In an attempt to ensure their clients get away with it, legal advisers are presumed to construct their case for the defence in a way which presents lawbreakers' behaviour to the further criminal justice system as unintentional and resulting from a disturbed state of mental health. There is a risk that mitigations of punishment, if not outright acquittals, will then follow. The potential consequences of presenting the lawbreaking of ones' clients as unintentional and as

a result of their suffering from a disturbed state of mental health is that they will get away with it at any bail hearings and trials. In the case of the former, bail may be preferred by the court over remand or remand into treatment over remand into custody. In the case of the latter (and as discussed in Chapters 2 and 3), officers correctly assert that impaired mental health may act as a defence to criminal offences or mitigate any penalty to one of treatment. However, in the course of an informal conversation, a defence lawyer suggested that to draw the attention of the court to extra-ordinary behaviour may, for some lawbreakers who have committed the less grave of offences, be a tactic of last resort. This is on account of the potentially indeterminate and coercive nature of treatment when weighed against the less punitive forms of punishment such as the fine.

The notion of legal advisers as obstructionist to police interests in justice while in pursuit of their clients' best interests is one that is seemingly contradicted by research (see Pearse and Gudjonsson, 1997:50) which points to the apparent passivity of legal advisers in police stations. Based on his experience, one custody officer did suggest a way of resolving these conflicting positions. He claimed that clerks or legal executives who attended police stations in the place of their employers sometimes tended to play it safe by advising lawbreakers to remain silent. In so doing they postponed taking any definitive course of action that they were unsure about until they had had the opportunity to review the case with a more experienced lawyer. Lawbreakers would thereby avoid committing themselves in the interview to a story which they would later find it difficult to retract. And their legal advisers would not get into trouble for allowing them to do so.

However, and while there is some truth in this explanation, the notion of legal advisers as obstructionist must be further reconciled with officers' claims that they would positively encourage some extra-ordinarily behaved lawbreakers to exercise their entitlement to legal advice. In other words, some lawbreakers do deserve legal advice and these are the lawbreakers who deserve to get away with it; who deserve the effects of mental disorder. Police talk about legal advisers as obstructionist of officers' interests is concerned with officers' interests in relation to those who do not deserve to get away with it. After all, as a number of officers pointed out, lawbreakers who demand a legal adviser or who refuse to help the police must have something to hide (see Chapter 3). And it goes without saying that lawbreakers who have something to hide are morally if not legally guilty. The purpose of such talk is to provide officers with a moral (if not a legal) justification for their attempts to get legal advisers on their side.

Getting legal advisers on the side of officers rather than that of the undeserving is to

render the entitlement to legal advice as ineffective as is possible. That is, by giving lawbreakers little or no opportunity to obstruct the course of the investigation. This is best achieved by keeping legal advisers out of the police station altogether while the process of investigation, and particularly the interview, is underway. However, any failure on the part of officers to inform lawbreakers of their entitlement to legal advice can result in the exclusion of any evidence obtained (see the provisions of the Police and Criminal Evidence Act 1984 as discussed above in relation to the appropriate adult). The likelihood that any failure to inform lawbreakers of their entitlement will come to light increases with the gravity of the lawbreaking. The more serious the alleged offence, the greater the penalty. The more likely that lawbreakers wish to avoid that penalty and prosecutors to see it imposed, the more that lawyers from the prosecution and defence will scrutinise events in the police station to satisfy themselves that all legal proprieties have been observed (in order that officers, on the one hand, and lawbreakers, on the other, do not get away with it). Therefore,

The implications of committing a serious offence is that it will go to Crown Court...so you get it right from the start. (Detective Constable: City Station: Respondent No.27)

While legal advisers cannot be arbitrarily kept out of police stations if undeserving lawbreakers request their presence, it is nevertheless possible for officers to deter or delay their arrival (this is in addition to officers' power to delay legal advice where they define the lawbreaking as a serious arrestable offence - see Chapter 3). At the same time, officers must ensure that lawbreakers give every appearance of freely choosing not to exercise their entitlement or freely acquiescing to be interviewed in the absence of their legal adviser. Admissions of guilt freely made by lawbreakers who choose not to receive legal advice constitute good evidence for officers to put to the prosecutors and to the courts. So, for example, custody officers can inform undeserving lawbreakers of their 'rights' in such a cursory way that they are not properly acknowledged or taken up (see above on lawbreakers arrival at the police station and see further below)(see further on officers' means of deterring and delaying legal advice in Sanders and Bridges, 1990).

Moreover, some undeserving lawbreakers may be persuaded into accepting 'second-class' advice.

Some don't realise the consequences of what they are saying. A phone call to a solicitor is sufficient for an explanation of what they should do, of what their rights are. It's not always necessary for the solicitor to attend. They can get advice over the phone.(Detective Constable:

While it is legally proper for extra-ordinarily behaved lawbreakers to receive advice over the telephone, it is not inevitably in their best interests to do so as an alternative to being interviewed in the presence of a legal adviser. Being advised on how to conduct oneself (that is, on what to say and what not to say) and having the capacity to do so (despite some degree of impaired mental health) are not one and the same thing. This is particularly the case where extra-ordinarily behaved lawbreakers, having been diagnosed by police surgeons as not suffering from a mental disorder (or as suffering from an 'untreatable' mental disorder), are not assisted by an appropriate adult (see above). Under such circumstances, lawbreakers may be persuaded (in their 'best interests') into making admissions about their behaviour that may be difficult to revise or deny at a later date.

Officers risk getting into trouble, however, should they attempt to dissuade others of the undeserving from exercising their entitlement to legal advice. Those who have something to hide are often

The 'regular' criminals, I'm talking about those that you deal with on a regular basis. (Detective Constable: City Station: Respondent No.26)

And among the regulars are extra-ordinarily behaved lawbreakers who, despite their 'feigned' appearance as mentally disordered, are well aware of their legal rights and entitlements. Not only are they less likely to be deterred or dissuaded from receiving legal advice but any such attempts by officers may later be incorporated into their defence to any criminal charges against them. Evidence of impropriety on the part of the police, as already discussed, undermines criminal cases.

Officers draw sharp distinctions between the kinds of extra-ordinarily behaved lawbreakers who do not deserve legal advice and those who do.

In my opinion, the people who need a legal adviser are people who haven't encountered the police before. So you get somebody like a middle manager, a business man...I'm not saying that they haven't committed the offence, they're not necessarily innocent. (Detective Sergeant: Rural Station: Respondent No.34)

It is with the morally (but not necessarily legally) innocent lawbreakers that officers play fair rather than appear to play fair.

While the lawbreakers who deserve to get away with it deserve a legal adviser to (attempt to) ensure that they do so, officers do not urge them to seek a legal adviser in order

that they will follow any advice to remain silent. As explained above, it is in officers' 'best interests' that all lawbreakers tell the truth (the truth that the deserving tell being consistent with their excusability and the truth that the undeserving tell being consistent with their punishability or their dangerousness). Rather, on the basis of the truth, legal advisers are in a position to construct a case which will depict lawbreakers to others of the criminal justice system as deserving of the beneficial effects of mental disorder (see above).

Yet officers' interests in securing the presence of a legal adviser do not originate solely in their desire to get lawbreakers their just deserts.

You get people without experience of ever having being arrested before - it's their first time in the station under arrest....sometimes you have shoplifting women who have never done it before. They are not necessarily mentally disordered but they need a solicitor. It's for their own safety.(Detective Constable: Rural Station: Respondent No.44)

Lawbreakers who deserve to be mentally disordered, therefore, need some measure of protection from any exercise of police power which may later come to be interpreted (by lawyers or by the courts) as excessive or overbearing in all of the circumstances (see above in relation to the appropriate adult). It is not only the deserving, however, who may find themselves put at risk by the absence of a legal adviser.

I believe that you need a solicitor there when certain people don't grasp the seriousness of the allegation against them, when they've been arrested for a significant offence and they have, in fact, committed that offence. The evidence is good and you know that they are going to admit that they did it...In these sort of situations where they don't have a lawyer present, you obtain an explanation, the person gets charged and then they get a lawyer afterwards ...the sort of people in these situations usually tend to be law abiding... (Detective Sergeant: City Station: Respondent No.29)

In urging the respectable and morally innocent to seek a legal adviser who will, as far as it is possible to do so, safeguard that respectability and moral innocence, officers are simultaneously safeguarding their own reputations by keeping out of trouble. As Goffman (1967(a):14) states,

In trying to save face of others, the person must choose a tack that will not lead to loss of his own.

Not all of the extra-ordinarily behaved lawbreakers whom officers treat as 'vulnerable lawbreakers' (see Chapter 4) inside the police station are inevitably vulnerable outside it. In fact, what some among the respectable share with some among the disreputable (namely the

'regulars' noted above) is an awareness of their rights and entitlements and an ability to exercise them that puts officers at risk if they should get it wrong. The distinction between these kinds of lawbreakers is their moral standing and, according to the majority of officers, legal advice can never be in the 'best interests' of the disreputable and morally guilty.

There remain others of the deserving and undeserving who also share some common ground in respect of legal advice.

There are situations where someone is not mentally ill, they are just a bit slow to understand. Then you have to look at the offence. If it's trivial then you may caution them and away they go, there's no need for a solicitor. But if someone is slow, if they don't quite understand what's happening, then they will say they will have a solicitor when the CO asks them if they want one. They will say that they want one simply because one is on offer or because they feel that they should have one, even if they don't want one. These people are not mentally ill, they are educationally backward and if the evidence is overwhelming then they would usually make an admission anyway. (Detective Constable: City Station: Respondent No.30)

This statement raises issues which, being beyond the ambit of this thesis to fully explore, can only be noted here.

Officers talk about lawbreakers who deserve legal advice in order that they get their just deserts predominantly in terms of the 'vulnerable lawbreakers' described in some detail in Chapter 4 and briefly above. The 'vexatious' and 'victimised' lawbreakers (also described in Chapter 4) who number among those deserving of the effects of mental disorder feature very little. Similarly, officers talk of lawbreakers who do not deserve but nevertheless receive legal advice in order that officers keep out of trouble predominantly in terms of the more 'professional' or 'normal villains' (see also Chapter 4), that is, regulars who 'know the ropes'. The kinds of extra-ordinarily behaved lawbreakers described by the detective constable (above) are those whose lawbreaking is more likely to amount to low-level rather than particularly grave offences. They are more likely to be persistent lawbreakers whose lives are characterised by difficulties which run the entire gamut of social and health problems, including drink and drugs, unemployment and impaired mental health. Such lawbreakers are less likely to be capable of knowing about or comprehending the nature of their rights and entitlements while detained in the police station, nor the potentially adverse consequences of their failure to exercise them. They are consequently more likely to be deterred or dissuaded by officers from their exercise. If they are persuaded into making admissions and are dealt with by way of a caution or on first appearance in the magistrates' court then they are unlikely to seek to question their 'convictions' with a legal adviser at a later date. Nor, given the limited resources of prosecutors and courts, are such cases likely to

be subjected to any real degree of scrutiny which would reveal whether officers got it wrong in the police station (for example, in failing to call an appropriate adult).

All of these factors allow officers to justify not playing fair and interviewing such lawbreakers in the absence of a legal adviser with little risk of getting into trouble for doing so. In fact, officers can justify to themselves such a course of action on the basis that legal advice would be in these lawbreakers 'worst interests'. According to a number of officers, since the job of legal advisers is to (attempt to) ensure that their clients get away with it, they encourage not guilty pleas. And since the magistrates do not favour such pleas, legal advisers earn their clients a more punitive punishment or treatment disposal than they would have received had they pleaded guilty. Therefore, and based on no 'real' evidence, officers assert that moral justice can only be done for some lawbreakers in the absence of a legal adviser.

However, it may be suggested that these kinds of extra-ordinarily behaved lawbreakers are the very lawbreakers who 'need' rather than 'deserve' or 'demand' legal advice since they are the most at risk of moral and legal justice not being done.

#### **(v) 'Get the Prosecutors on Side'**

Once the process of investigation is complete, officers have to decide their next course of action, that is, whether to charge extra-ordinarily behaved lawbreakers or whether to release them. This decision is normally made by custody officers on the basis of the evidence gathered by the investigating officers. Notwithstanding that these lawbreakers have been detained in the police station for the purposes of further investigation and notwithstanding that there may be sufficient evidence that they have committed a criminal offence, there is no legal presumption that charges **must** be brought in every case. At the point at which extra-ordinarily behaved lawbreakers move out of the jurisdiction of the police and into that of the prosecutors and the magistrates, custody and investigating officers remain concerned to get moral justice done.

Custody officers' reluctance to charge some among the extra-ordinarily behaved lawbreakers can be explained in terms of getting them their just deserts while keeping out of trouble. Officers are well aware that deserving lawbreakers whom they treat as mentally disordered can often find their way into the more punitive forms of punishment, particularly imprisonment. Similarly they are well aware that undeserving lawbreakers whom they treat as if they were mentally disordered can often find themselves receiving the least punitive forms of treatment. While neither of these 'worst case scenarios' amounts to a failure of legal



justice, officers nevertheless judge them as constituting a moral wrong (see Chapter 3).

Yet where lawbreakers deserve to get away with it, custody officers would risk getting into trouble if they were merely to release them from the police station without taking any further action. Such a course is beset by the same kinds of risk that were discussed above in relation to releasing without further detention extra-ordinarily behaved lawbreakers upon their arrival at the police station. Therefore, custody officers cannot ignore such factors as the gravity of the lawbreaking or its impact on any victims. To do so would be to invite criticism from one's superior officers and from others of the criminal justice system should lawbreakers repeat their behaviour or should victims' interests be denied. On the other hand, custody officers would invite criticism from prosecutors if they were to charge those who may deserve to be punished but in respect of whom neither the evidence nor the public interest warrants charges and prosecution (see Chapter 3).

Consequently, and as explained throughout this chapter, in ensuring (or attempting to ensure) that lawbreakers get their just deserts, officers must keep out of trouble by justifying their actions according to a known rule (and ultimately according to a legal rule) and by shifting functional and moral responsibility for those actions elsewhere. This is achieved through a process of distantiation (which has been more fully explained earlier in this chapter). As Bauman (1989:184) describes it,

*responsibility....arises out of the proximity of the other...Responsibility is silenced once proximity is eroded.*

Custody officers play fair with extra-ordinarily behaved lawbreakers and initiate procedures which are intended to secure prosecutorial advice on the most appropriate course of action (see Chapter 3 on prosecutorial consultation).

If somebody is mentally disordered then I put in an advice file because I need input from the CPS. (Custody Officer: Rural Station: Respondent No.38)

Seeking this advice provides officers with the opportunity to present prosecutors with the 'truth' about extra-ordinarily behaved lawbreakers (and see further below). Those who deserve to be mentally disordered are presented in terms of lack of intentionality and of disturbed mental health, conditions which are most likely to secure their excusal by prosecutors from any further criminal proceedings. Those who deserve to be punished are presented in terms of intentionality and responsibility which are most likely to ensure

prosecutorial approval of their charge and prosecution.

You don't always have to consult with the CPS, it's not mandatory. But if you do consult, it's often to see what charges are going to be preferred. So you ring the CPS...such as where someone is mentally disordered and then you can go for lesser charges. The police do put details about mental disorder and any medical action that they have taken on the file plus anything that the investigating officers have thought relevant. If this is done, it's likely that the CPS would consult us.(Custody Officer: City Station: Respondent No.45)

It is the prosecutors and not the police who are responsible for initiating and continuing criminal prosecutions. Where police officers decide that it is in their own and/or lawbreakers' 'best interests' to do so, they treat prosecutors as 'experts' (see above in relation to police surgeons). They are then able to claim to be doing their job (and doing it properly) while at the same time vesting in prosecutors the functional responsibility for doing something with extra-ordinarily behaved lawbreakers. If the decision to charge or to release is made by these 'experts' then officers will not get into trouble if lawbreakers who deserve to be treated are punished and lawbreakers who deserve to be punished get away with it.

The CPS have the ultimate say anyway. If they don't think there's sufficient evidence they don't prosecute. It's easier to let them have their say first, rather than we do all the work and the CPS then say that they don't wish to prosecute.(Custody Officer: City Station: Respondent No.46)

And in presenting the prosecutors rather than themselves as having the power to 'direct the result' (see above), officers further vest in the prosecutors the moral responsibility for any failure of moral justice.

If the CPS say to us 'we think this or that should happen' even if I strongly disagree then there's nothing I can do. (Custody Officer: City Station: Respondent No.46)

However, any claims to powerlessness in getting extra-ordinarily behaved lawbreakers their just deserts are belied by officers claims to influence over prosecutors which results in getting them on the side of the police.

Getting the prosecutors on side has so far been discussed in the context of their 'advising' custody officers to charge those lawbreakers who deserve to be punished and to avoid charging or to minimise the charges against those lawbreakers who deserve to get away with it. However, there are some among the extra-ordinarily behaved lawbreakers (namely the 'victimised' and the 'vulnerable') who deserve to get away with it whom officers must charge because (for example, on account of the gravity of their lawbreaking) to do

otherwise would be to risk getting into trouble. There are others who deserve the effects of mental disorder (namely the 'vexatious') whom officers must charge simply because, in the absence of a police surgeon's diagnosis that they are mentally disordered and treatable, there is nothing else to be done with them (as discussed earlier in this chapter). Getting the prosecutors on side in respect of such lawbreakers is to secure prosecutorial agreement on their 'mental disorder'. 'Mental disorder' can consequently provide grounds for discontinuance ('in the public interest' - see Chapter 3) and for the negotiation of defences (see Chapter 2) and treatment outcomes within the further criminal justice system. The means by which officers get the prosecutors on side is through the case files which are constructed by officers and forwarded to the prosecutors following charge.

If you have to go ahead and charge someone but you don't think that they are to blame, there is no reason that you can't write the file up that way. That isn't so if you think that they are blameworthy, so you get things missed out of the summary. Again, where you get persistent criminals, even if you feel sorry for them there is no way that you can't go through the motions. So the decision to charge and the blameworthiness of the person do not necessarily go together.(Custody Officer: City Station: Respondent No.45)

Officers rely on their being able successfully to present lawbreakers as deserving or undeserving of mental disorder in these files since they are aware that the nature of the prosecutorial role offers prosecutors limited opportunity (at least at the outset of cases) to define lawbreakers as 'mentally disordered' for themselves. It is not within the prosecutorial remit to interview lawbreakers prior to charge or after it and so, in order for prosecutors themselves to define lawbreakers' behaviour as extra-ordinary.

Something would have to be very odd in the dock.(Principal Crown Prosecutor: Respondent No.53)

Since extra-ordinarily behaved lawbreakers are often calmed down by their first court appearance, the 'something' would have to be quite extra-ordinary indeed. Prosecutors could come to define behaviour as extra-ordinary from

Irrational replies in interviews, irrational responses to other people's behaviour in offences, such as abnormal violence.(Principal Crown Prosecutor: Respondent No.55)

Since prosecutorial time to review all but the most serious of cases in any depth (and particularly before a first court appearance) is constrained by the sheer volume of work and limited resources, behaviour that would be likely to draw attention would be particularly out

of the ordinary. Prosecutors, therefore, tend to rely on evidence of lawbreakers' 'mental disorder' from the case files put together by police officers.

Most commonly mental disorder comes from the confidential information in the file such as suicide attempts or information that comes from relatives and so on.(Principal Crown Prosecutor: Respondent No.55)

'Factual information' about extra-ordinarily behaved lawbreakers is mediated through officers who have an interest in the doing of moral justice.

We don't see a lot of what goes on in the police station, we just get edited highlights.(Senior Crown Prosecutor: Respondent No.57)

Consequently, lawbreakers whom officers have defined and treated as mentally disordered are constructed in the files in ways which are consistent with their excusability or punishability.

Whether they read the file and make the decision to go to court, well, their decision depends on how you word the file, what you say and what you do not say.(Custody Officer: City Station: Respondent No.48)

Files are written in standard terms. You emphasise the good or the bad depending on what you want the CPS and the court to think. You usually do it by ending the report with something good or bad about the accused that will create the right impression.(Detective Sergeant: City Station: Respondent No.52)

Attempting to pass the responsibility for getting moral justice done to the prosecutors creates a disjuncture, however, between what it is that officers wish prosecutors to do with lawbreakers who deserve to be mentally disordered and what prosecutors are able to do with them. Officers sometimes expect that prosecutors can succeed where they themselves have failed and secure a treatment disposal despite there being no medical evidence of mental disorder.

We make it clear to the CPS that they have been examined by the police surgeon. The circumstances will indicate that they might be mentally disordered even if the doctor says that they are not mentally ill. Then it's their (CPS) decision.(Custody Officer: City Station: Respondent No.17)

Although prosecutors can and do take conditions of disturbed mental health into account when considering the initiation and continuation of prosecutions (see Chapter 3), any diversion from the criminal justice process into treatment is dependent upon a medical

diagnosis that a lawbreaker is mentally disordered and treatable.

There is a danger that we might run cases to try and get help for that person. We feel that it is irresponsible to just do nothing but there is a problem because they may go to prison. The health services do not do enough so we have to continue. We are reluctant to discontinue just because they are mentally disordered but if it is a minor offence and they can be cared for then we will. (Principal Crown Prosecutor: Respondent No.55)

Where police surgeons decline to diagnose lawbreakers as mentally disordered and treatable, prosecutors have limited recourse to seek further medical opinion.

If someone is unfit to plead then we can seek our own reports but only where the offence is serious because of the expense. (Principal Crown Prosecutor: Respondent No.55)

Other than where the charge is one of murder (under which circumstances psychiatric assessment of lawbreakers is mandatory),

We have no real mechanism for requesting psychiatric reports. (Principal Crown Prosecutor: Respondent No.53)

Prosecutors, therefore, are often constrained within their own legal and organisational requirements (which fall beyond the ambit of this thesis to discuss) from getting what officers believe to be moral justice done. But because officers do not really know what prosecutors (or any other professional bodies who have dealings with the 'mentally disordered' - see also above on police surgeons) can and cannot do with extra-ordinarily behaved lawbreakers, they are able to rely on this imperfect knowledge to justify passing to them the buck of moral responsibility.

But even while claiming to influence the prosecutors and to get them on side, officers are more than aware that lawbreakers do not always get their just deserts. Consequently, officers undertake a process of distantiating (described earlier in this chapter) from unjust outcomes which are the end result of a series of events which, by embarking upon a particular course of action, they have set in motion. So, officers justify what they do according to a known rule (and ultimately according to a legal rule) and ensure that they bear no responsibility should justice not be done.

Officers, therefore, emphasise the success with which they have done their own job and the propriety of their course of action.

With some of them, it's the 'cry for help' syndrome. They try to commit suicide or they commit

a crime. But you don't want to get the person punished, you want to get them treated. I had a chap who was a alcoholic. He was sent before the magistrates not because I thought he should be found guilty but because I thought they could initiate treatment. But the magistrates did not play ball and he got sent to prison. So if they are mentally disordered and they are criminal as well, then the priority is to deal with the mental side first. So it may be necessary to charge to get them treatment. But they can fall at the first hurdle, you know, I mean, with the magistrates and not get put in the right box.(Custody Officer: City Station: Respondent No.33)

Not only do officers lay emphasis upon their successfully doing their own jobs but they also lay emphasis on the failure of other professionals who have responsibility for doing something with 'mentally disordered' lawbreakers to discharge that responsibility.

The problem is always left to us. It's left to the police and the courts to deal with. It's not dealt with by the doctors - they don't want to know.(Custody Officer: Rural Station: Respondent No.40)

Somebody's mental disorder is obvious to the court because of the probation and pre-sentence reports that are done. So it is not as if the court does not know.(Detective Constable: City Station: Respondent No.21)

We know as police officers what to do. We call in the psychiatrists or we send them into court so that the court can order them to be assessed. It's clear cut for us but the problems are past police level.(Detective Sergeant: City Station: Respondent No.20)

Legal justification for bringing charges against extra-ordinarily behaved lawbreakers who do not deserve to be charged is usually premised upon such factors as sufficiency of evidence or gravity of offence (as discussed earlier). However, moral justifications for playing one's part in the eventual subjection of these kinds of lawbreakers to undeserved punishment are premised upon the notion of 'best interests'. That is, where lawbreakers whom officers have treated as mentally disordered find their way into the most punitive disposals it is to their advantage (and where lawbreakers whom officers have treated as if they were mentally disordered find themselves in similar circumstances, justice, as far as officers are concerned, has been done).

Punishment can be a pre-cursor to their receiving the most appropriate treatment.

Prison has got the ability to assess people properly. They can get the time that the police do not have.(Custody Officer: City Station: Respondent No.47)

Or, punishment can function as treatment itself.

Once they go from here, basically they must get better help. Pre-sentencing reports are done and such....Once they get to prison they get help....there are more facilities.(Custody Officer: City Station: Respondent No.48)

By engaging in a process of moral distantiation, officers are capable of constructing what amounts to a 'worst case scenario' for extra-ordinarily behaved lawbreakers who deserve to be mentally disordered as a 'best case scenario' and moral justice is thereby done.

## **CONCLUSION**

This chapter has been concerned to explain the ways in which police officers (attempt to) ensure that extra-ordinarily behaved lawbreakers get their just deserts while ensuring (or attempting) to ensure that they avoid getting themselves into trouble. In other words, this chapter describes a process by which police officers get moral justice done.

At its most simple level, just deserts would require that the respectable and morally innocent among extra-ordinarily behaved lawbreakers get away with it. Such lawbreakers, therefore, deserve to be neither arrested nor charged. That is, they do not deserve to be treated as if they were 'normal villains'. If officers are able to let these lawbreakers get away with it without getting themselves into trouble, then they will do so. Some lawbreaking is perceived by officers to be relatively minor and takes place at the lowest point of visibility (such as a domestic dispute). In such circumstances, officers judge there to be a greater risk of censure from those involved, from superiors and from others of the criminal justice system if they were to take formal action (such as an arrest) than if they were to reach an informal resolution. However, the risk of censure for 'inaction' increases in proportion to such factors as the perceived gravity of the lawbreaking, its impact upon any victims and the likelihood of its recommission. Where formal inaction in respect of those who deserve to get away with it is not possible (and they are consequently unable to get away with it altogether), officers treat such lawbreakers as mentally disordered in order that they benefit from its effects.

Furthermore, not all of those whom officers treat as deserving of mental disorder are respectable and morally innocent lawbreakers who deserve to benefit from its least punitive effects. 'Mental disorder' is capable of bringing about the rehabilitation or, perhaps more importantly as far as officers are concerned, the (indeterminate) incapacitation of 'normal patients' whose behaviour is sufficiently out of the ordinary that it threatens their own safety and that of others. 'Mental disorder' is further capable of bringing about similar effects for those among the 'vexatious lawbreakers' whose lawbreaking is a constant and unwelcome source of nuisance to police officers.

Therefore, and in order that lawbreakers may benefit from the effects of mental disorder, officers take formal action under s136 of the Mental Health Act 1983 or under the powers of arrest in order that they may be assessed by a doctor with the prospect of diversion into treatment. Where doctors find diversion to be impossible (for example, where behaviour is diagnosed as presenting insufficient risk to warrant compulsory hospitalisation) or where officers find it necessary to detain lawbreakers for the purposes of further investigation (for example, on account of the gravity of the lawbreaking), then those who deserve to be mentally disordered deserve to benefit from the provisions of the Police and Criminal Evidence Act 1984 which protect suspects and particularly vulnerable suspects. Police officers, therefore, play by the rules and facilitate lawbreakers' access to the appropriate adult and the legal adviser and additionally 'advise' the prosecutors. In presenting deserving lawbreakers to some among these people as 'sick' and this 'sickness' as causative of their lawbreaking, officers consolidate the definition of deserving lawbreakers as mentally disordered in order that it may mitigate criminal responsibility or a punitive sentence in future criminal proceedings. If deserving lawbreakers are treated as mentally disordered in the police station there is a greater likelihood that they will be found to be mentally disordered in the further criminal justice system. Nevertheless, it is not merely in the 'best interests' of deserving lawbreakers that officers play by the rules but rather that they wish to avoid the risk of getting into the trouble consequent upon the tainting of evidence secured in conditions where it becomes apparent that all of the proprieties were not observed.

Yet some among the extra-ordinarily behaved are disreputable and morally guilty lawbreakers who do not deserve to get away with it at all. Officers, therefore, do not necessarily wish to deal with their lawbreaking by taking no formal action (for example, by 'moving them on'). Neither do they wish to detain such lawbreakers under the provisions of the Mental Health Act 1983 and, although they wish to arrest them, nor do they wish to afford them the safeguards provided under the Police and Criminal Evidence Act 1984 following that arrest. To do so is to take the risk that doctors will diagnose lawbreakers who deserve to be punished as if they were mentally disordered and to divert them from the police station. Should they fail to be diverted then to treat such lawbreakers as if they were mentally disordered creates the risk that they will appear to others of the criminal justice system to be mentally disordered and be diverted from the criminal justice process.

However, where lawbreakers such as these behave in ways which are sufficiently out of the ordinary, officers feel it necessary to treat them as if they were mentally disordered and seek a medical assessment of their behaviour. If officers were to get it wrong and ignore



such behaviour and if any physical or psychological harm should befall any lawbreakers as a result, then officers would get into trouble, not least because any evidence obtained would be rendered inadmissible.

If morally innocent lawbreakers are punished and morally guilty lawbreakers receive treatment then legal justice is done. The law makes no distinctions on moral grounds. It requires only that there is sufficient proof of the lawbreaker's commission of a crime that a court can be satisfied as to guilt or sufficient evidence of mental disorder that a doctor can be satisfied as to mental disorder. Where officers believe that moral justice is jeopardised then, rather than playing by the rules, they appear to play by the rules. Officers, therefore, select for those who do not deserve to be mentally disordered the most inappropriate of appropriate adults and undermine their entitlement to a legal adviser. Further, these lawbreakers are constituted in verbal and written reports as knowing and culpable and dangerous in order that if they receive treatment it is of the most punitive kind.

But in spite of officers' best efforts extra-ordinarily behaved lawbreakers do not always get their just deserts. Officers, therefore, engage in a process of distantiation, that is, putting a distance between their actions and the outcomes for lawbreakers. To do so, officers provide legal and moral justification for what they do (for example, arrest and charge of lawbreakers) that may somehow contribute to lawbreakers receiving (morally but not necessarily legally) undeserved punishment or treatment. Justification may be anticipatory, in that it is given in anticipation of lawbreakers failing to receive their just deserts. Or it may be retrospective and offered when moral injustice becomes known. Distantiation further requires officers to shift responsibility for the doing of moral injustice elsewhere, emphasising their own success in carrying out their allotted role in the process of criminal justice and the failure of others (such as doctors and courts) to do their jobs properly.

Yet to engage in an explanation of the process of distantiation is not to explain why moral justice fails to get done. When police officers attempt to ensure that lawbreakers get their just deserts while keeping themselves from getting into trouble, they are attempting to achieve by psychiatric means a moral justice which is peculiar to their position as agents of their own organisation and that of the wider criminal justice system.

Some extra-ordinarily behaved lawbreakers are treated by officers as or as if they were mentally disordered on the grounds that their behaviour is so bizarre and incomprehensible in all of the circumstances that they are not only mentally disordered but pose a grave risk to themselves and to others. Their just deserts are immediate incapacitation (and, optimistically, cure) and in such a 'diagnosis' of dangerousness doctors often concur

that they are suffering from a mental disorder.

Some others of the extra-ordinarily behaved lawbreakers are treated as mentally disordered because officers believe that they deserve to get away with it. Others are treated as if they were mentally disordered because officers wish to keep out of trouble. Yet others are treated as mentally disordered because they possess a high nuisance factor and officers wish to secure their incapacitation.

Police officers, therefore, wish the medical profession to treat the morally innocent, to punish the morally guilty and to get rid of otherwise problem lawbreakers. However, all of these extra-ordinarily behaved lawbreakers do not and cannot satisfy the medical criteria of mental disorder and its effects in terms clinical symptomology (for example, a 'vexatious lawbreaker's' addiction to alcohol does not necessarily amount to any psychiatric condition); treatability (for example, there is some uncertainty as to whether personality disorder can respond to any kind of treatment); and availability of treatment (for example, care in the community has led to a reduction in in-patient treatment facilities). Consequently, doctors often fail to do with extra-ordinarily behaved lawbreakers what officers would wish them to do. And the legal representatives and the prosecutors whom officers hope will get moral justice done are similarly bound by the constraints as officers themselves. The only access to mental disorder and its effects is by way of a medical diagnosis that these people have neither the authority to make nor to demand.

But what appears to officers as just deserts may conceal the fact that a moral injustice has been done. Morally guilty lawbreakers who suffer from impaired states of mental health may not, as far as officers are concerned, *deserve* treatment but they do *need* treatment. Where officers are successful in undermining their every appearance of mental disorder, both lawbreakers and others with whom they come into contact can suffer physical or psychological harm from their being caught up in inappropriate conditions of remand or punishment in community or institutional facilities.

On the other hand, lawbreakers for whom police officers successfully achieve a diversion from the police station or from the courts do not always get the kind of treatment that officers would consider that they deserve. Although these lawbreakers may initially be treated under psychiatric conditions of the least invasive and coercive kind (the kind perceived by officers to constitute 'a benefit' of mental disorder), unlike punitive sentences these conditions are invariably indeterminate in nature. Moreover, should lawbreakers fail to cope with or respond to treatment and manage their disturbed mental health in ways that are judged as appropriate by the psychiatric profession they may then find themselves moving

through increasingly invasive and coercive treatment regimes in increasingly secure institutions. The moral justice that police officers sought to get done and that appears to them to be done is belied in circumstances where neither treatment nor punishment fit the crime.

## THE THESIS

Lawbreakers whose extra-ordinary behaviour results in their being defined as mentally disordered are conceptualised within formal juridical discourse and practice in accordance with medico-legal understandings. Discourse is concerned with the extent to which disturbed states of mental health may wholly or partially excuse criminal responsibility and mitigate punishment. Practice is concerned with the reaching of legal verdicts and medical diagnoses of mental disorder and putting them into effect.

As practitioners of criminal justice police officers are authorised to take various courses of procedural action in respect of lawbreakers who behave in extra-ordinary ways and who appear to be mentally disordered. Despite the fact that police officers have no authority to pass a juridical verdict upon the issue of lawbreakers' criminal responsibility and mitigation of punishment nor to medically diagnose them as mentally disordered and in need of treatment, officers can and do (attempt to) ensure that the outcome for lawbreakers whom they define as mentally disordered is that which officers desire and which they think lawbreakers deserve.

The analysis of the empirical evidence supports the thesis that while police officers' definitions of and dealings with mentally disordered lawbreakers are formally and ostensibly made in accordance with formal juridical discourse and practice, the police understanding of mental disorder is one that derives from and is peculiar to their function as agents of criminal justice who enforce and act in accordance with the legal and extra-legal rules and regulations of the criminal law, of their own organisation, and of the wider criminal justice system. Where police officers define lawbreakers as mentally disordered it is a means by which they (attempt to) ensure that both formal (legal) and informal (moral) justice is done.

- (i) Police officers make moral distinctions between lawbreakers who behave in extra-ordinary ways and who they come to define as mentally disordered.
- (ii) Police officers are concerned that the legal outcome of the criminal justice process is that which these mentally disordered lawbreakers morally deserve.
- (iii) The formal rules of criminal law and procedure do not make moral distinctions, creating the risk that lawbreakers will not receive their just deserts.
- (iv) Police officers constructions of extra-ordinarily behaved lawbreakers as mentally disordered are intended to secure moral justice by legal means.

1. Police officers are under an organisational imperative to

- (i) make sense of situations involving lawbreakers whose abnormal and ambiguous (extra-ordinary) behaviour breaches the rules which regulate everyday police interaction with law breakers.
- (ii) determine whether extra-ordinarily behaved lawbreakers fall within the jurisdiction of the criminal law and criminal justice system.
- (iii) determine whether extra-ordinarily behaved lawbreakers fall within the jurisdiction of the medical profession.
- (iii) determine the appropriate rules of law and procedure that must be invoked in respect of extra-ordinarily behaved lawbreakers.

Police practices by which officers make sense of the extra-ordinary are reflective of bureaucratic practices which attempt to impose order on all that falls within its administrative ambit. These in turn are reflective of the practices of modernisation which attempts to create a world in which the likelihood of future events can be predicted on the basis of past experience and according to rational principles.

2. Lawbreakers do not behave in ways which are essentially and always indicative to police officers of mental disorder. Mental disorder is the product of an encounter between police officer and lawbreaker and is signified to the former by extra-ordinary behaviour on the part of the latter. 'Mental disorder' is a name given by police officers to explain lawbreakers' behaviour

- (i) that is extra-ordinary in all of the circumstances in which it takes place  
(i.e. where it subverts the social rules and expectations which govern everyday interaction between police officers and lawbreakers)

and

- (ii) to which cannot be attributed any other explanation  
(i.e. which cannot be normalised as being typical of any other deviant or non-deviant behaviour normally engaged in by lawbreakers)

3. 'Mental disorder' bears no universal meaning.

- (i) Mental disorder is characterised by pre-modern conceptions of madness which

conceive of the mad as irrational, irresponsible, unpredictable and consequently dangerous people who have no control over their actions. The incapacitation of such people is thereby justified.

- (ii) Mental disorder is characterised as sickness which brings about a legitimated excusal from everyday social obligations to those who are defined as 'sick'. Their obligation is rather to take steps to get well and so the treatment of such people is justified.
- (iii) Mental disorder is characterised as a moral state which excuses social rulebreaking. All members of society are under a moral obligation to observe the social rules by which its members regulate their conduct. Breaches of these rules are presumed to be willed and, in the absence of innocent explanation, are met with moral censure.
- (iv) Mental disorder is characterised as wholly or partially negating lawbreakers' criminal responsibility. The presumption that all breaches of the criminal law are willed and that lawbreakers are knowing and consequently responsible for their lawbreaking is rebutted by evidence that a lawbreaker's mental disorder at the time of the lawbreaking was such as to impute a causative link between the mental condition and the criminal behaviour, thereby eroding voluntariness.
- (v) Mental disorder is characterised as a mitigation of punishment to treatment which rebuts the presumption that punishment is consequent upon a finding of guilt and so functions to exempt mentally disordered lawbreakers from any legal requirement to suffer any punitive consequences for their actions.

4. Commonsense judgements, legal verdicts and medical diagnoses of mental disorder are capable of bringing about particular effects for extra-ordinarily behaved lawbreakers.

- (i) the status of 'mental disorder' symbolises a complete or partial absence of moral and/or legal responsibility for one's actions.
- (ii) The medical condition of 'mental disorder' can and does require treatment which may be
  - (a) minimally coercive and invasive and beneficial in its effects.
  - (b) coercive, indeterminate, institutionalised and punitive in its effects.

5. Police officers purposively define extra-ordinarily behaved lawbreakers as mentally disordered in order

- (i) to mitigate the severity of the criminal law for those lawbreakers whom officers believe to be morally innocent but legally guilty.
- (ii) to subject to indeterminate incapacitation those lawbreakers whom officers believe to be dangerous and to whom the criminal justice system cannot offer effective and indefinite control.
- (iii) to punish those whom officers believe to be morally guilty and capable of feigning mental disorder in order to avoid punishment.

The possibility of individualised justice is afforded to officers by way of their discretion. However, discretion 'does not constitute a realm of *free*, arbitrary action' (Weber, 1948 (1991 ed.):220) and so individualised justice for lawbreakers is only individualised in so far as it is exercised according to the norms of the police organisation.

6. Police officers are unable to directly and formally bring about the legal and medical effects of mental disorder but are authorised only to act in accordance with the formal rules of criminal and procedural law which regulate police dealings with mentally disordered lawbreakers. Legal and medical outcomes are consequently brought about by informal means which are constituted by officers' organisational and operational working rules and practices.

7. When officers (attempt to) do moral justice by informal means these means must be (or appear to be) in accordance with and be successfully justified with reference to a known rule and ultimately to a legal rule. Officers thereby avoid the risk of censure from individuals and/or bodies within and outwith the police organisation and the wider criminal justice system.

Therefore,

the process by which police officers come to define lawbreakers as mentally disordered is one which they perceive to be the effective management (medical) morality, (legal) justice and (organisational) risk. This process, doing moral justice, is one of balancing the risk that lawbreakers will fail to receive their just deserts with the risk that, in

securing (attempting to secure) these just deserts, officers will be subjected to legal and/or moral censure.

- (i) The definitional process is one of NAMING lawbreakers as mentally disordered (i.e. assigning extra-ordinary lawbreakers into moral categories by invoking extra-legal rules) and TREATING lawbreakers as mentally disordered (i.e. by invoking the formal rules of law that are particular to mentally disordered lawbreakers).

This process is not a sequential one wherein the naming and treating of extra-ordinarily behaved lawbreakers as mentally disordered are a series of processes which lie in a fixed and linear progression from one to the other. Officers do not first of all determine the excusability or punishability of lawbreakers, then go on to determine their deservedness (or otherwise) of mental disorder and then proceed to treat lawbreakers as mentally disordered according to some utilitarian approach by which officers avoid censure. Officers can and do take formal action first and subsequently come to define lawbreakers as deserving or undeserving of the effects of mental disorder. Conversely, to define lawbreakers as deserving or undeserving of mental disorder does not inevitably guarantee that officers are able to treat them as mentally disordered or otherwise. The process, therefore, constitutes a coherent whole.

(Ch. 4 and Ch.5)

- (ii) Police officers normalise ALL lawbreakers into categories which are organised according to knowledges that are produced and reproduced within the police organisation.

Since it is the job of police officers to deal with people who breach legal and/or social rules in ways which may cause immediate harm to themselves and to the persons or property of others, officers swiftly assess the situations and the lawbreakers involved by assigning them a category that enables them to take the course of action that is the most 'professionally' appropriate in all of the circumstances. The 'typical' characteristics of lawbreakers are inculcated through organisational training and professional experience and constitute police commonsense about the ways in which normal lawbreakers and normal mentally disordered lawbreakers can and do behave. Officers are enabled to avert the risk of compromising their professional authority before the public and before members of their own and others criminal justice organisations.



(Ch. 4, I (i)(ii); II (i)(ii)(iii))

- (iii) These categories are moral ones and are organised according to the moral innocence or the moral guilt of lawbreakers.

Lawbreakers who observe the extra-legal rules and norms of social conduct approved by police officers are deemed by them to be 'respectable' while lawbreakers who subvert these rules and norms are deemed to be 'disreputable'. There is no one symbol that is essentially significant of 'respectability' and 'disreputability'. 'Respectability' and 'disreputability' are concerned with but not confined to, inter alia, the performance of social and gender roles and with respect for and resistance to officers' legal authority. Officers explain all present and future behaviour and extra-ordinary (irrational, unexpected, unpredictable) behaviour in terms of these assigned moral categories and thereby avert the risk that they will mistake the 'fraudulently' mentally disordered from the 'genuinely' mentally disordered and, in turn, compromise their professional authority before others.

(Ch. 4, I (ii); II (i)(ii)(iii); III; IV (i)(ii); V)

- (iv) Definitions of mental disorder made in the present are intended by police officers to bring about future effects. Officers, therefore, pre-empt the outcome of the criminal justice process in respect of lawbreakers who behave in extra-ordinary ways and name them as mentally disordered in order to avoid the risk that they will be subjected to undeserved conviction and/or punishment.

Respectable lawbreakers who are understood by police officers to be morally innocent deserve to be named as the type of lawbreakers who are not wholly criminally responsible for their lawbreaking and who deserve acquittal and/or treatment. Police officers name these lawbreakers as mentally disordered in order to avoid the risk that they should be dealt with by the criminal justice system as if they were 'normal' lawbreakers. Lawbreakers (whether respectable or disreputable) whose behaviour is perceived by officers to be sufficiently intolerable in terms of its persistent and low-level nature or in terms of the threat of present and future harm to self or others that officers deem them to be dangerous deserve indeterminate incapacitation. In naming these lawbreakers as mentally disordered officers intend to avert the risk that their lawbreaking will be repeated.

In order that moral categories be justified as psychiatric conditions from which clinical diagnoses and treatment can flow, officers cite as symptomatic of mental disorder lawbreakers' circumstances which are related, inter alia, to misuse of alcohol and proscribed drugs, to social problems and to the extra-ordinariness and dangerousness of lawbreaking itself. This is intended to avoid the risk that doctors will fail to diagnose extra-ordinarily behaved lawbreakers as mentally disordered and treatable.

In order that moral categories be justified as legal categories from which acquittal and/or mitigation of punishment may flow, officers establish a causative link between the lawbreaking and the 'medical' conditions over which lawbreakers have no control. This is intended to avoid the risk that other members of the criminal justice system will define extra-ordinarily behaved lawbreakers as criminally responsible and therefore punishable.

(Ch. 4, II (ii); III; IV (i)(ii); V (i))

- (v) Police officers pre-empt legal verdicts and medical diagnoses by avoiding the formal courses of action in respect of extra-ordinarily behaved lawbreakers which would draw them to the attention of doctors and agents of the criminal justice system. This is intended to avert the risks that are attendant upon opening up officers' actions to the scrutiny of others in that should these others fail to concur in officers' definitions of lawbreakers as mentally disordered, these lawbreakers will not receive their just deserts and officers will be potentially subjected to censure.

The principle of just deserts as it is understood by officers requires that those who deserve to benefit from the symbolic and functional effects of mental disorder should do so while those who do not deserve to benefit should not. The practice of just deserts allows officers to divert extra-ordinarily behaved lawbreakers who deserve to be mentally disordered away from the criminal justice system while formally processing extra-ordinarily behaved lawbreakers who deserve punishment.

Dispensing individualised justice by informal means both averts a risk (since activating bureaucratic mechanisms in respect of ALL extra-ordinarily behaved lawbreakers is practically and economically unviable) and creates a risk (since ANY extra-ordinarily behaved lawbreakers may require medical and judicial attention) that

officers will be subjected to the censure of their colleagues and others of the criminal justice system.

(Ch. 4, II (iii)(b); IV (i)(ii); Ch. 5, I (i)(ii))

- (vi) In order to avert the risk of censure police officers treat extra-ordinarily behaved lawbreakers as mentally disordered by invoking the rules of law and procedure that regulate police dealings with mentally disordered lawbreakers.

To put the principle of just deserts fully into practice and to avoid taking formal action in respect of all lawbreakers who deserve to be mentally disordered is to create the risk that any harm to persons and/or property which is resultant from untreated mental ill-health and/or disregarded lawbreaking is attributed to police inaction. This is to invite public, organisational and ultimately legal censure. The risk of censure for inaction increases in proportion to such factors as the perceived gravity of the lawbreaking, its impact upon any victims and the likelihood of its recommission.

On the other hand, and since the formal rules of law and procedure make no moral distinctions between mentally disordered lawbreakers, police officers are compelled to treat as mentally disordered the morally guilty whose extra-ordinary behaviour they are unable to normalise into any other deviant or non-deviant category. This creates the risk that those

who do not deserve to 'get away with it' will do so.

(Ch. 4, III; IV (ii); V (i); Ch.5, I (i)(ii); II (i)(ii)(iii)(iv))

- (vii) Since the formal action that police officers take jeopardises just deserts by producing categories of extra-ordinarily behaved lawbreakers who are not (morally) what they would appear (legally) to be, officers utilise working rules in order to present lawbreakers as they 'really' are.

The constraints upon formal action compel officers to treat those who are deserve to be mentally disordered as if they were 'really' criminals (where lawbreaking is such that officers risk censure if they do not arrest, detain, charge) and those who deserve to be punished as if they were 'really' mentally disordered (where behaviour is sufficiently 'sick' that officers risk censure if they do not seek medical assessment).

When the former have to be criminalised (because officers have failed to secure a

psychiatric diagnosis followed by an immediate diversion into treatment) and where the latter have to be medicalised (because officers fail to prevent a psychiatric diagnosis of mental disorder) officers attempt to secure an outcome that reflects lawbreakers' 'real' (and moral) status.

To others of the criminal justice system who have an indirect authority over the verdict (i.e. superior officers, defence and prosecuting lawyers) officers present the lawbreaking of the morally innocent as an unlikely to be repeated result of a medical condition which requires the least invasive of psychiatric treatment; and the lawbreaking of the 'dangerous' and the morally guilty as intentional and the result of a medical condition which manifests itself in actual and potentially harmful ways, which is likely to recur and which demands the most coercive and restrictive of psychiatric treatments.

Officers tell the 'truth' about lawbreakers to others in verbal and documentary reports and engage in working practices intended to secure admissions from lawbreakers in which they tell the 'truth' about themselves.

This creates the risk that any evidence submitted in the course of criminal proceedings and which appears to have been obtained in breach of proper procedures will be tainted.

(Ch. 5, I (i)(b); (ii); II (i)(ii)(iii)(iv))

(viii) In order to avert the risk of legal and organisational censure that would follow if officers were to appear to have secured moral justice by legally unjust means, officers afford legal justice to those who deserve to be mentally disordered and afford every appearance of legal justice to those who do not.

Officers are censured (by colleagues, by superiors, by others of the criminal justice system) not only where they fail to successfully justify their actions according to a known rule and ultimately to a legal rule but also where they are found to be responsible for any adverse consequences of their formal or informal actions in respect of extra-ordinarily behaved lawbreakers.

All lawbreakers whom officers treat as mentally disordered must be afforded the procedural safeguards to which mentally disordered lawbreakers are legally entitled (inter alia, the presence of an appropriate adult and legal adviser during detention). Since officers cannot justify their arbitrary refusal, they render the safeguards for those

whom they treat as mentally disordered as effective as they are legally intended to be (for example, by urging the presence of a legal adviser during interview) and render the safeguards for those who do not deserve to be mentally disordered as ineffective as it is legally possible for them to be (for example, by selecting the most inappropriate of appropriate adults to be present at the interview).

Facilitated by the hierarchical nature of the police organisation and the division of responsibility within and outwith the criminal justice system for people who break the law *and* who suffer mental health problems, officers are able to restrict their dealings with (and thereby their responsibility for) lawbreakers by doing no more than their job. In so doing they shift the responsibility for getting lawbreakers their legal and moral just deserts to others (doctors, families, colleagues and so on) who are formally or informally authorised to deal with mentally disordered lawbreakers.

Placing reliance on others to achieve moral justice by legal or extra-legal means creates the risk that these others will fail to do so and that the morally innocent will be punished, the morally guilty will not and the 'dangerous' will be inadequately and inappropriately controlled.

(Ch. 4, V (i); Ch.5, I (i)(ii); II (i)(ii)(iii)(iv))

(ix) Police officers pre-empt the risk of moral censure should moral justice fail to be done by creating a distance between the outcome for mentally disordered lawbreakers and their own part in bringing about that outcome.

The conviction and/or punishment of those who deserve to be mentally disordered and the acquittal and/or treatment of those who do not is not a legal but rather a moral wrong. In spite of their best efforts, police officers are often ineffectual in their attempts to do moral justice by legal means and are aware that they bear a moral if not a legal responsibility where moral justice fails to be done.

If police officers are subjected to moral censure then it is because they are found to bear a moral responsibility for failing to get justice done. Therefore, they justify what they do (in their own 'best interests') on the grounds that they act in lawbreakers' 'best interests' and shift the moral responsibility for doing nothing or doing the wrong thing with mentally disordered lawbreakers to others within and outwith the criminal justice system. Moral distantiation is facilitated by the bureaucratic nature of the police and criminal justice organisations and the division of responsibility in respect to

lawbreakers who are mentally disordered, particularly since the professional distance between police officers and these others means that they do not and cannot know what they are and are not authorised to do.

Distantiation creates the risk that the morally guilty who suffer from mental ill-health do not receive the treatment that they need (rather than deserve) and the morally innocent and the 'dangerous' get more than they deserve (in that treatment is potentially more punitive in its effects than punishment itself)

(Ch. 4, II (ii); Ch.5, I (i)(c)(d); (ii)(a)(c); II (iv))

## **APPENDIX I: CATEGORIES OF MENTAL DISORDER**

The following are the major psychiatric groupings of mental disorder which contain the conditions referred to in the theoretical and empirical parts of this thesis. The groupings are those employed by the 4th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)(1994) from which all subsequent material in this appendix is drawn.

### **1. MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISORDERS**

This category includes conditions which are of genetic or chromosomal origin, such as Down's Syndrome and conditions which result from traumas to the brain due to accident or physiological disease.

- (i) Mental retardation (sometimes described as mental handicap or 'learning disability') is characterised by
  - (a) impaired intellectual functioning as defined by an intelligence quotient of 70 and below.
  - (b) impaired adaptive functioning as defined by persons' ability to cope with the common demands of day to day life.

Other developmental disorders (including mental retardation) are characterised by

- (a) impaired functioning in relation to academic skills, primarily associated with literacy and numeracy; and
- (b) impaired functioning in relation to verbal communication and the capacity for 'normal' interaction with others.

The degree to which persons may be affected by disorders of development is variable as are the behaviours which are manifestations of their condition.

In some circumstances, the symptomology of such disorders may be related to, for example, persons' poor skills in reading and in written expression; disordered and disturbed ways of speaking to and conversing with others which may be reflected in oddities in speech patterns and in overly talkative or overly silent behaviour; and an inability to make and sustain friendships.

In other circumstances, disorders may involve an inability to perform simple tasks

such as washing, dressing and eating without assistance; repetitive and obsessive mannerisms; and a limited ability to communicate in a meaningful way with others through the use of words or signs. There may be a propensity for aggressive behaviour, for the infliction of self-injury; and to engage in violent behaviour towards others.

While it is possible that the difficulties of academic and social functioning associated with the milder forms of mental impairment may be overcome through education, care and training, the condition of mental retardation is permanent.

## **2. DELIRIUM, DEMENTIA AND OTHER COGNITIVE DISORDERS**

This category includes conditions which are 'external' or 'internal' in origin. Examples of the former are head traumas and the use and abuse of proscribed and prescribed drugs. Examples of the latter are Parkinson's Disease and Alzheimer's Disease.

- (i) Delirium is characterised 'by a disturbance of consciousness and a change in cognition that develops over a short period of time' (DSM-IV,1994:123).
- (ii) Dementia is characterised 'by multiple cognitive defects that include impairments in memory' (DSM-IV,1994:123).

Persons who are diagnosed as suffering from these short and long-term cognitive disorders manifest symptoms which can include memory loss; disorientation as to time and place; repetitious, confused or rambling speech; perceptual disturbances such as hallucinations; hyperactivity; lethargy; and an impaired ability to perform simple actions and everyday tasks.

While delirium is a transitory state, dementia is a progressive and deteriorating condition.

## **3. SUBSTANCE-RELATED DISORDERS**

The 'substances' in this category of disorders are drugs of abuse (including alcohol), medication and toxins (DSM-IV,1994:175). 'Substances' include amphetamines, cannabis, cocaine, sedatives, caffeine, anti-histamine, steroids, pesticides and inhalants.

The origins of substance-related disorders lie in

- (a) the dependence upon and abuse of substances; or



- (b) intoxication by or withdrawal from substances.

Substance dependency is characterised by, inter alia, a tolerance for and the marked effects of withdrawal from the substance concerned; and by the adverse effects upon physical health and upon social, occupational and recreational activities. The behavioural symptoms of amphetamine and cocaine dependency, therefore, can be aggressive and violent in nature or manifest themselves as bouts of intense anxiety.

These latter features are further significant of substance abuse which, in the case of alcohol, may be evidenced in an incapacity to care for children and to carry out other domestic responsibilities. Intoxicated persons may engage in activities, such as driving or operating machinery, which put themselves and others at risk of harm.

Substance intoxication is characterised by adverse psychological and physiological effects which may result in, for example, an impaired ability to function in social situations or hyperactivity and raised blood pressure. The symptoms manifested by persons intoxicated by hallucinogenic drugs include visual or auditory hallucinations, the fear of losing one's mind, loss of co-ordination and blurring of vision.

Substance withdrawal is characterised by 'clinically significant distress or impairment in social, occupational, or other important areas of functioning' (DSM-IV,1004). Where the intoxicant is alcohol, withdrawal is symptomised by, for example, insomnia, nausea, anxiety or grand mal seizures.

Substance related disorder may be short lived (for example, in cases of substance abuse) or persist over a longer period as the condition becomes one of continuous use punctuated by withdrawal.

#### **4. SCHIZOPHRENIA AND OTHER PSYCHOTIC DISORDERS**

This category includes conditions that may originate in structural abnormalities of the brain; or arise from a familial and biological predisposition; or be induced by the use of substances (Substance Induced Psychotic Disorder).

The disorders in this category are characterised by the presence of psychosis, that is, the presence of delusional or hallucinatory experiences. These experiences are more than transitory and persist over days or months.

Persons may be diagnosed as suffering from these psychotic disorders where they display two or more of the following symptoms:

- (i) delusions - for example, of being spied upon or followed; of believing that thoughts have been put inside one's head; that bodily actions are directed by an outside force.
- (ii) hallucinations - the most common of these are auditory and are often concerned with the hearing of voices that may, for example, be threatening or take the form of a conversation between two or more voices.
- (iii) disorganised speech - evidenced by responses which are tangential or wholly unrelated to the topic of conversation.
- (iv) grossly disorganised behaviour - which may be apparent in unkempt or inappropriate modes of dress and appearance or in unpredictable and agitated behaviour such as swearing and shouting in public places.
- (v) negative symptoms - which may consist of immobility, poor eye contact and limited speech.

Psychotic disorders are often gradual in development and, although full and temporary remissions are possible, the conditions are usually chronic.

## **5. MOOD DISORDERS**

The conditions included in this category may originate as a result of abnormalities in neurotransmitters, in physiological conditions such as Parkinson's Disease or be induced by substance use.

Disorders of mood may be depressive or manic in nature.

- (i) Depressive disorders of mood are characterised by episodes of depressed mood which are signified not only by a loss of interest in almost all aspects of life but also by such features as loss of energy, problems in concentration and decision-making and thoughts of death and suicide.

The symptomology of this category of disorders may include irritability, a loss of interest in hobbies and recreational activities, insomnia, fatigue and a slowing of speech and movement. Persons may become unable to care for themselves or even take preparatory steps towards their suicide through the acquisition of some appropriate materials.

While disorders of this nature may be chronic and persist for long periods, in many cases persons enter a full remission.

- (ii) Manic disorders of mood are characterised by episodes of mania which involve 'an abnormally and persistently elevated, expansive or irritable mood' (DSM-IV,1994:328) and such other features as 'inflated self-esteem or grandiosity, flights of ideas....and excessive involvement in pleasurable activities with a high potential for painful consequences'(DSM-IV,1994:328).

The disorder may manifest itself in grandiose delusions where persons are convinced of their special relationship with significant and well-known public figures; incessant talking which may be jocular or angry; increased sexual desire; increased sociability evidenced by intensive bouts of communication with friends, acquaintances, strangers or public figures.

This type of mood disorder often takes the form of periods of 'normality' punctuated by manic episodes.

## **6. PERSONALITY DISORDERS**

'A Personality Disorder is an enduring pattern of inner experience and behaviour that deviates from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment' (DSM-IV,1994:629). There are various classes of personality disorder which are manifested in

- (i) odd or eccentric behaviours (comprising Paranoid, Schizoid and Schizotypal Personality Disorders). Persons diagnosed with these types of disorder may, among other things, experience a mistrust of others and their motives; question the loyalty of family and friends; bear grudges over perceived insults or slights (Paranoid Type); and lead a solitary existence, being unable to form close relationships with others (Schizoid Type).
- (ii) behaviour which is erratic, dramatic or emotional (comprising Antisocial, Borderline, Histrionic and Narcissistic Personality Disorders). Such disorders may be evidenced in the Antisocial (or psychopathic) type by 'a pervasive pattern of disregard for and violation of the rights of others' (DSM-IV,1994:645) where aggression, violence, deceit and manipulation are the

means employed to gain some personal profit. Persons diagnosed as falling into the category of Narcissistic Personality Disorder may be boastful, believing themselves to be admirable, privileged, successful and entitled to special treatment from others for whom they have no concern.

- (iii) behaviour which is fearful and anxious (Avoidant, Dependant and Obsessive-Compulsive Personality Disorders). The behaviours of persons diagnosed as suffering from these types of disorder include those intended to assert their taking and maintaining control over their lives, such as constant reference to rules and procedures, compulsion and perfectionism in the carrying out of everyday tasks, adherence to routine and an inflexible and rigid approach to work and to social relationships (Obsessive-Compulsive Personality Disorder).

Personality Disorder is persistent and enduring although the behaviours associated with the disorders themselves may become less evident as persons grow older.

## **APPENDIX II: METHODOLOGY**

### **1. THE LOCATION OF THE FIELDWORK**

The fieldwork for the empirical research was carried out at intervals between 1993 and 1995 in a county to the north of the Midlands. This county will be known as 'Midshires'.

The county has a population of approximately 1,055,000 million distributed throughout both sizeable urban conurbations and rural and semi-rural communities.

Residents from ethnic minorities comprise approximately 19,500 of the total population of Midshires..

At the conclusion of the fieldwork, during the period 1996-1997, the number of crimes recorded in the county was 91,884. Almost 15,000 files were sent by the police to the Crown Prosecution Service and criminal proceedings were instituted in more than 90% of cases.

Midshires was selected as the location for the fieldwork for reasons that were both practical and methodological.

- (i) Prior to undertaking the thesis and in the course of teaching and other post-graduate work, connections were established with several officers of the Midshires police service. This network of informal relationships was vital in setting the scene for the empirical research and in facilitating the more formal interviews.
- (ii) The choice of the location of the fieldwork was intended to (and did) fulfil the following criteria.

The policing of small towns and villages can often be a qualitatively different experience for officers than the policing of cities. This can consequently impact upon the ways in which police officers define lawbreakers as mentally disordered and upon the means that are available to divert or otherwise deal with them.

The policing of a large city involves officers in the policing of a population which is more likely to feature people who are, inter alia, transient and temporary residents, who are homeless, who are outsiders and who are strangers to officers. The populations of small rural or semi-rural communities are more likely to be stable and the people who live there are more likely to be known to one another and to the officers who police them. As distinct from the 'personalised' and relatively relaxed styles of community policing that can operate outside large urban areas, officers in city police stations are more likely to encounter mentally disordered lawbreakers in the course of a working day consisting of emergencies, crises and urgent demands upon their time. In fact, the number of urban immediate response incidents (defined as incidents where life could be in danger) in Midshires in the period 1996-7 was 16,407, while the number of rural immediate response incidents was 3874.

More pragmatically, since mentally disordered lawbreakers are presented within criminal justice discourse as an exception rather than as the norm, it was important to select

an area where such lawbreakers were likely to appear with sufficient frequency within the criminal justice system that its practitioners were likely to encounter a reasonable number of such cases. Midshires has witnessed an ongoing programme of psychiatric hospital closures. These hospitals housed the mentally ill and the mentally handicapped, many of whom have since been re-settled in the community. There is also a small forensic unit situated in Midshires which serves the county and beyond. This is not the kind of facility, however, to which officers may themselves (and without calling out a doctor) direct lawbreakers who appear to them to need immediate psychiatric help and diversion from the criminal justice process.

It was ultimately decided to be unnecessary to undertake county-wide research since the general criteria outlined above were satisfied by the diverse populations and facilities that existed in the north west of the county. The city of Midtown which has a population of approximately 237,000 is surrounded by small rural and semi-rural communities. Two large psychiatric hospitals on the outskirts of the city have closed and their populations have been re-located within both the city and the outlying towns and villages. There is a large hospital situated within the city where there are facilities for psychiatric patients. There is also an accident and emergency department to which police officers may take lawbreakers whose mental condition appears to warrant urgent attention.

While acknowledging that fieldwork undertaken within the Metropolitan area would probably be more fruitful in terms of the numbers of mentally disordered lawbreakers dealt with by the criminal justice system on a day to day basis, and consequently in terms of the experience of its practitioners, the uniqueness of the location gives rise to idiosyncratic results. Despite there being no attempt to make this a comparative piece of work, it was felt that it would be more representative of other provincial areas.

## **2. THE TARGET GROUP**

This thesis was originally conceived of as an investigation into the ways in which practitioners of criminal justice

- (a) come to define lawbreakers as mentally disordered, and
- (b) on the basis of their definitions, access the formal and informal provisions of the criminal justice system through which mentally disordered lawbreakers may be diverted.

It was intended, therefore, that the target group to be interviewed comprised personnel drawn from the police, the Crown Prosecution Service, lawyers acting on behalf of defendants and the magistracy.

The grounds for selecting the target group were twofold

- (i) The thesis is concerned with the ways in which professionals who are experts in the field of criminal justice come to define lawbreakers as mentally disordered, mental disorder being a field in which they possess no professional expertise. The thesis is theoretically grounded in the concept of mental disorder as a social

construction rather than as a measurable and objectively identifiable physiological condition. It was neither necessary or appropriate, therefore, to include in the proposed target group professionals working within or on the periphery of the criminal justice system who possessed any medical (such as police surgeons) or quasi-medical (such as social workers) expertise with mentally disordered people.

- (ii) The examination of the ways in which lawbreakers are constructed by practitioners of criminal justice as mentally disordered was not intended as one which merely examined the formal legal and procedural understandings of mental disorder contained in statutory provisions and judicial decisions on the subject, accessible in the public domain. Rather it is intended as an examination of the discourses of the criminal justice personnel whose 'public' talk about mental disorder is not only and often inaccessible (in that it occurs in the unreported proceedings in magistrates' courts) but must also be framed to accord with ways of talking about mental disorder in courtrooms and in documentary reports that are approved by criminal justice.

Interviews were initially sought with members of the Crown Prosecution Service and subsequently with police officers.

#### **(i) Crown Prosecutors**

Permission was received to interview five Crown Prosecutors based at the area headquarters of the Crown Prosecution Service which serves the north west of the county. The five comprised three Principal Crown Prosecutors (one of whom was female) and two Senior Crown Prosecutors. No opportunity was made available to select interviewees on the basis of, inter alia, grade or gender. The prosecutors interviewed were among those who instituted proceedings and prosecuted cases forwarded to them by the police officers to be interviewed. The interviews conducted with this small group were intended to be preliminary and exploratory in nature with a view to conducting further interviews following a preliminary analysis of the data.

The type of interview recording schedule took the form of a semi-structured questionnaire (see Appendix III). The interviewees had to be given the opportunity to explain their understanding of mental disorder rather than be constrained within the limitations imposed by a more structured and rigid set of questions - and to explain what they would like to do (but were legally and procedurally unable to do) with mentally disordered offenders.. The interviews were of approximately 45 minutes duration and were conducted by myself.

#### **(ii) Police Officers**

The initial target group of police officers comprised 29 officers who were drawn from 5

police stations in the north west of Midshires. 3 of these police stations were located in Midtown and 2 were located in rural areas at a distance of some 15 miles from the city. The target group was made up of 9 police constables (4 of whom were female); 5 custody officers (all of whom were male); 10 detective constables (all of whom were male) and 5 detective sergeants (1 of whom was female).

On completion of these interviews, it was suggested by a senior officer that further access to other officers in other police stations and at county headquarters be followed up. The target group of police officers was therefore extended to include a further 8 custody officers (1 of whom was female); 16 probationary constables (of whom 6 were women) and 2 officers (both of whom were male) who taught courses on interview techniques. A large number of informal discussions were also held with police officers of various ranks at various police stations in the north west of the county.

The interviews with the initial target group of police officers produced a wealth of valuable empirical data. As the number of potential interviewees increased it became apparent that the target group as it had originally been envisaged (that is, to include defence lawyers, magistrates and yet more prosecutors) would prove to be too ambitious to interview successfully and too unwieldy in terms of the amount of data that would be produced. It was decided, therefore, to focus the empirical research solely upon police officers, a particular advantage being that, as gatekeepers to the criminal justice system, the police have more opportunity to encounter the mentally disordered lawbreaker and more opportunity for informal diversion than any other agency of criminal justice. The data already obtained as a result of interviews with Crown Prosecutors provided valuable material which supplemented that obtained from police officers.

The criteria which informed the selection of the initial target group of police officers were

- (a) that, for reasons already discussed above, officers must be drawn from police stations in both city and rural or semi-rural areas, and
- (b) that the officers interviewed be drawn from different ranks.

Different ranks of officers encounter lawbreakers whom they define as mentally disordered in different settings and have different roles in relation to them. Police constables are often called upon to deal with such lawbreakers in public places or in domestic situations where they must make decisions regarding their removal to a police station or otherwise. Custody officers have statutory duties in relation to lawbreakers whom they define as mentally disordered which are concerned not only with safeguarding their well-being while in detention but also determining whether criminal charges are brought and they pass into the further criminal justice system. Members of the CID are often involved in the interrogation of mentally disordered lawbreakers, particularly where the lawbreaking is of a serious nature.

The type of interview recording schedule took the form of a semi-structured



questionnaire (see Appendix III) which gave the officers ample opportunity to provide anecdotal rather than official explanations about their experience of mentally disordered lawbreakers. Each interview lasted approximately 45 minutes and was conducted by myself.

A preliminary analysis of the data from the initial interviews conducted with custody officers indicated that the significance of their role in relation to mentally disordered lawbreakers had been underestimated. The follow up questionnaires with a further group of custody officers were tailored, therefore, to draw out matters which needed clarification and expansion (see Appendix III).

The use of semi-structured questionnaires administered by myself was inappropriate in relation to probationary constables. The extent of the access afforded was to contact the group at the beginning of their induction course which took place at the county police headquarters; to contact a group of them again part way through their time spent working on at the divisional station to which they had been posted and where they had gained some experience in street policing; and to contact all of them for the last time in the final session of their probationary training at the county police headquarters. This aspect of the fieldwork was not undertaken with the intention of drawing any rigorous comparisons between probationary training in the matter of mentally disordered lawbreakers employed in the past and in the present nor was it intended to constitute an authoritative evaluation of the training process through which police officers become socialised. Both of these issues were supplementary rather than central to the thesis itself. Furthermore, the official constraints that were imposed on the amount of time that could be spent in talking to the probationary constables meant that any interviews conducted by myself would be so limited as to be valueless. It was decided, therefore, that a questionnaire structured in a way that would allow them some scope to express an opinion and to reflect upon their experience and which would be completed by the officers themselves and returned by post would be more appropriate (see Appendix III). The data obtained in this way was utilised in providing an insight into rather than an appraisal of the training and induction process. All of the questionnaires that were given out to the officers were filled in and returned to myself.

No recording schedule was drawn up for the 2 officers based at county police headquarters who were responsible for the organisation and delivery of training courses for colleagues on interview techniques. Instead, the conversations held with them and the observations made by myself were noted.

### **3. SOME PROBLEMS IN THE EMPIRICAL RESEARCH**

Access to the officers across the five police stations and in the original target group was organised by a force research liaison officer based in the north west of the county. The officers to be interviewed at each police station could not be selected beforehand by myself but were determined by their availability in that they could be spared from other duties. This gave rise to some concerns about the representativeness of the target group in terms of the rank, the gender and the race of officers to be interviewed. The concerns about rank and

gender proved to be unfounded (although this was largely due to chance rather than design). A number of officers from all of the ranks sought were interviewed. The percentage of women interviewed was slightly higher than their percentage of officers overall (given a force strength of 2,200 of which the 370 women officers comprised 15%). However, it did not prove possible to interview any officers from ethnic minority groups (given that there were 25 such officers in the force).

Two further conditions were placed by the liaison officer upon the research process. The first of these was that a copy of the initial interview recording schedules was to be made available to the chief officer at each of the police stations which were designated to take part in the fieldwork prior to the interviews taking place. Unfortunately, the officer in charge of one of the city stations misunderstood his instructions not to make the interview schedule available to any other officers and as a result it became apparent during the course of the interviews that at least two of the officers were prepared (or believed that they were prepared) for some of the questions. Although the design of the interview meant that it was not entirely compromised, a degree of caution was exercised in the analysis of the data from all interviews conducted at this police station.

The second of these conditions imposed was that there was to be no taping of any of the interviews. Following some negotiation, permission was given to record the answers in which officers were asked to provide their own definitions of mental disorder and mentally disordered lawbreakers (see Appendix III). While observing the restriction, it was possible at the same time to suggest that officers supplement their answer by giving examples of the kinds of lawbreakers under discussion. In this way, it was possible to record a great deal of valuable data.

While there were drawbacks involved in the formal entry to the field of research, informally granted access was not without its disadvantages. Although the opportunities that were afforded for interviews, conversations and observations were extensive and invaluable, the attitude of the officers who took part was primarily dependent upon the source of the recommendation that they be involved. Where their involvement was sought by or mediated through a colleague or friend of more or less equivalent rank the responses tended to be open and friendly. On the occasions when it became known that some informal access was afforded by a senior officer, the response was (at least initially) wary and suspicious and officers tended to confine their conversations to the 'official' and to talk in terms of written rules and procedures and thereby avoid offering the very kinds of information that the fieldwork was intended to elicit.

## **APPENDIX III: QUESTIONNAIRES**

### **Police Questionnaire: Police Constables/Sergeants**

#### **PROFESSIONAL EXPERIENCE**

1. Rank?
2. Length of service?
3. Entry as a cadet?  
If no, see question 4 below.  
If yes, during the course of your training were you instructed in
  - a) police powers in relation to the mentally disordered?  
If yes, can you briefly indicate what these powers are?
  - b) the different types of mental disorders and their symptoms?  
If yes, can you briefly explain what you were taught?
4. During the course of your college based training were you instructed in
  - a) police powers in relation to the mentally disordered?  
If yes, can you briefly indicate what these powers are?
  - b) the different types of mental disorder and their symptoms?  
If yes, can you briefly explain what you were taught?
5. During the course of your probationary (practical) training did you receive any guidance on identifying and dealing with mentally disordered people?  
If yes, could you indicate what form of guidance you received and from whom?

#### **DEFINING MENTAL DISORDER**

6. Have you any experience of mental disorder in any other than a professional capacity?  
If yes, in what capacity? (e.g. member of family, voluntary work etc.)
7. What is your understanding of the term 'mental disorder'?
8. Could you indicate what sort of behaviour or symptoms would suggest to you that a *person* is mentally disordered?
9. Could you indicate what sort of behaviour or symptoms would suggest to you that an *offender* is mentally disordered?

#### **ABNORMAL BEHAVIOUR IN PUBLIC PLACES**

10. What options are open to you when a person in a public place is acting in a way that is abnormal, worrying, threatening etc.?

11. What do you consider to be your priority (priorities) in such situations?
12. Could you give examples of the circumstances under which you would use s136 Mental Health Act 1983 (place of safety)?
13. Are there any circumstances under which you would use s136 where the behaviour amounted to an offence?
14. Where is the place of safety to which the person is usually taken?
15. How often do you estimate that you use s136?
16. Are there any types of cases that you have mentioned that cause you particular concern?
17. What are the most important factors which influence your decision to arrest a person whom you know or suspect to be mentally disordered?
18. When you arrest a person you know or suspect to be mentally disordered, what action do you take on arriving at the police station?

#### **MENTAL DISORDER AND CRIMINAL JUSTICE**

19. Are there any people who you are regularly called upon to deal with and who you feel are in need of some kind of medical help?
20. Are there any offences that you associate particularly with mentally disordered people?
21. Approximately what proportion of offenders that you deal with do you believe to be mentally disordered?
22. In your opinion, is there agreement throughout the criminal justice system (e.g. CPS, Defence lawyers, magistrates) that diversion of mentally disordered offenders is a priority?
23. Why do you think that mentally disordered offenders find their way into prison?

*Thank you for you co-operation in answering these questions and for your contribution to this research project.*

## **Police Questionnaire: Detective Constables/Sergeants**

### **PROFESSIONAL EXPERIENCE**

1. Rank?
2. Length of service?
3. Entry as a cadet?  
If no, see question 4 below.  
If yes, during the course of your training were you instructed in
  - (a) police powers in relation to the mentally disordered?  
If yes, can you briefly indicate what these powers are?
  - (b) the different types of mental disorders and their symptoms?  
If yes, can you briefly explain what you were taught?
4. During the course of your college based training were you instructed in
  - (a) police powers in relation to the mentally disordered?  
If yes, can you briefly indicate what these powers are?
  - (b) the different types of mental disorder and their symptoms?  
If yes, can you briefly explain what you were taught?
5. During the course of your probationary (practical) training did you receive any guidance on identifying and dealing with mentally disordered people?  
If yes, could you indicate what form of guidance you received and from whom?

### **DEFINING MENTAL DISORDER**

6. Have you any experience of mental disorder in any other than a professional capacity?  
If yes, in what capacity?  
(e.g. member of family, voluntary work etc.)
7. What is your understanding of the term 'mental disorder'?
8. Could you indicate what sort of behaviour or symptoms would suggest to you that a *person* is mentally disordered?
9. Could you indicate what sort of behaviour or symptoms would suggest to you that an *offender* is mentally disordered?

### **MENTAL DISORDER AND THE INTERVIEW**

10. Have you received training in interview skills?  
If yes, was this

- a) a formal course of instruction?
  - b) 'on the job' training?
10. In your opinion, what is the purpose of the interview?
  11. Could you describe the sorts of situations which make it difficult for you to interview a person?
  12. In your experience, what types of people are most in need of a legal adviser?
  13. In your experience, what types of people need someone (other than a legal adviser) to be with them during their interview?
  14. In what situations (if any) have you felt it necessary to seek medical assistance for a person under arrest who you believed to be mentally disordered?
  15. In what situations have you felt it necessary to call for an appropriate adult?
  16. Have you experienced any problems with appropriate adults? (e.g. delays in obtaining person)
  17. What do you consider to be your priorities in dealing with a suspect whom you believe to be mentally disordered?

#### **MENTAL DISORDER AND CRIMINAL JUSTICE**

19. Are there any people who you are regularly called upon to deal with and who you feel are in need of some kind of medical help?
20. Are there any offences that you associate particularly with mentally disordered people?
21. Approximately what proportion of offenders that you deal with do you believe to be mentally disordered?
22. In your opinion, is there agreement throughout the criminal justice system (e.g. CPS, Defence lawyers, magistrates) that diversion of mentally disordered offenders is a priority?
23. Why do you think that mentally disordered offenders find their way into prison?

*Thank you for your co-operation in answering these questions and for your contribution to this research project.*

## **Police Questionnaire: Custody Officers**

### **PROFESSIONAL EXPERIENCE**

1. Rank?
2. Length of service?
3. Entry as a cadet?  
If no, see question 4 below.  
If yes, during the course of your training were you instructed in
  - a) police powers in relation to the mentally disordered?  
If yes, can you briefly indicate what these powers are?
  - b) the different types of mental disorders and their symptoms?  
If yes, can you briefly explain what you were taught?
4. During the course of your college based training were you instructed in
  - a) police powers in relation to the mentally disordered?  
If yes, can you briefly indicate what these powers are?
  - b) the different types of mental disorder and their symptoms?  
If yes, can you briefly explain what you were taught?
5. During the course of your probationary (practical) training did you receive any guidance on identifying and dealing with mentally disordered people?  
If yes, could you indicate what form of guidance you received and from whom?

### **DEFINING MENTAL DISORDER**

6. Have you any experience of mental disorder in any other than a professional capacity?  
If yes, in what capacity?  
(member of family, voluntary work etc.)
7. What is your understanding of the term 'mental disorder'?
8. Could you indicate what sort of behaviour or symptoms would suggest to you that a *person* is mentally disordered?
9. Could you indicate what sort of behaviour or symptoms would suggest to you that an *offender* is mentally disordered?

### **MENTAL DISORDER AND DETENTION IN THE POLICE STATION**

10. If a person is brought into the police station as a place of safety (s136 Mental Health Act 1983), what action can you take?

11. Under what sort of circumstances does s136 tend to be used?
12. What, if any, are the problems that you experience in dealing with people brought into the police station as a place of safety?
13. What do you consider to be your priority (priorities) when dealing with an arrested person who you believe to be mentally disordered?
14. In what situations have you felt it necessary to seek an appropriate adult for a person brought into the police station under arrest?
15. Have you experienced any particular problems in obtaining medical or other assistance (e.g. appropriate adult) for a suspect whom you believe to be mentally disordered?
16. In your experience, is the person who acts as an appropriate adult most commonly  
social worker   parent/guardian   friend   relative   other?
17. Which factors are most important in influencing your decision to charge a mentally disordered person?
18. Which factors are most important in influencing your decision to bail a mentally disordered person?

#### **MENTAL DISORDER AND CRIMINAL JUSTICE**

19. Are there any people who you are regularly called upon to deal with and who you feel are in need of some kind of medical help?
20. Are there any offences that you associate particularly with mentally disordered people?
21. Approximately what proportion of offenders that you deal with do you believe to be mentally disordered?
22. In your opinion, is there agreement throughout the criminal justice system (e.g. CPS, Defence lawyers, magistrates) that diversion of mentally disordered offenders is a priority?
23. Why do you think that mentally disordered offenders find their way into prison?

*Thank you for your co-operation in answering these questions and for your contribution to this research project.*



**Police Questionnaire: Custody Officers: Follow-up interviews.**

1. Length of service?
2. Could you describe the training that you received in relation to the mentally disordered?
3. What is the force policy on dealing with mentally disordered people?
4. What policy do you think the CPS operate in relation to mentally disordered offenders?
5. What do you think that the magistrates can do if an offender is mentally disordered?
6. What courses of action can you take if someone is mentally disordered?
7. What particular problems do you experience in dealing with mentally disordered people?
8. Do you ever experience any problems with -  
    social workers  
    lawyers  
    doctors  
    If so, why?
9. Have you ever been unhappy about the decision of the CPS to prosecute a mentally disordered person?  
    If so, why?
10. Would you ever discuss a case directly with the CPS?
11. Have you ever been unhappy about a doctors diagnosis? If so, why?
12. What percentage of offenders do you estimate to be mentally disordered?
13. Why do you think that mentally disordered offenders get sent to prison?

*Thank you for your co-operation in answering these questions and for your contribution to this research project.*

### **Police Questionnaire: Probationary Constables (I)**

1. Could you briefly explain what you understand by the term 'mental disorder'?
2. Have you any experience of mentally disordered people before becoming a police officer?

If yes, in what capacity?

(family member, voluntary work)

3. Which of the following states do you believe to be a mental disorder? -  
(underline as appropriate)

schizophrenia   alcoholism   amnesia   paranoia   stress   mental handicap  
drug addiction   autism   pre-menstrual syndrome   Alzheimer's disease   mania  
learning difficulty   personality disorder   epilepsy   anorexia nervosa  
psychopathy   dyslexia   depression   cerebral palsy   phobia

4. Which of the following do you believe *may* be a sign that a person is mentally disordered? -

(underline as appropriate)

verbally aggressive behaviour   inability to read   self-mutilation  
untruthfulness   mode of dress   restlessness   inability to write   drunkenness  
attempted suicide   physically aggressive behaviour   facial expressions  
violence   does not answer questions   talkative   inconsistent statements  
anxiety

5. Could you indicate the different sorts of situations in which you think that police officers have to deal with people who are mentally disordered.
6. Approximately what proportion of suspects that the police deal with do you think are mentally disordered?

less than 5%   5% - 10%   10% - 25%   one third   more than 50% (please specify)

7. When mentally disordered people are found guilty of a criminal offence, which of the following sentences can the court impose? -

(underline as appropriate)

probation order   absolute discharge   supervision order   hospital order  
community service order   fine   community service order   conditional  
discharge   imprisonment   out-patient psychiatric treatment

8. Which of the above (Question 7) do you believe to be the most appropriate

sentence(s) for a mentally disordered offender?

9. What types of criminal behaviour (if any) do you particularly associate with mentally disordered offenders?

domestic assaults against partners    shoplifting    burglary    indecent assaults  
fraud    incest    domestic assaults against children    murder    possession of drugs  
indecent assaults on children    damage to property    disorderly conduct in  
public    wounding    rape    drunk and disorderly conduct    begging

*Thank you for your co-operation in answering these questions and for your contribution to this research project.*

## **Police Questionnaire: Probationary Constables (II) (Interim)**

1. Age
2. Did you enter the police service as a cadet?  
Yes      No  
If yes, during the course of your training were you instructed in
  - a) police powers in relation to the mentally disordered?  
Yes      No
  - b) the different types of mental disorders and their symptoms?  
Yes      No

### **TRAINING - COLLEGE BASED**

3. How long have you spent in training
  - a) at police headquarters?
  - b) at the regional training centre?
4. During the course of this training to date, have you been instructed in the powers that the police have to deal with mentally disordered people?  
Yes      No  
If yes, can you briefly explain what these powers are?
5. During the course of this training to date, have you been taught about the different types of mental disorders and their symptoms?  
Yes      No  
If yes, can you briefly explain what you were taught?
6. Has there been any input into this teaching by anyone other than a police officer?  
(e.g. someone with professional experience of mentally disordered people)  
Yes      No

### **PRACTICAL TRAINING - WITHIN THE DIVISION**

7. Could you briefly explain what form of instruction/ guidance/training you receive while you are working on your division?
8. Have you received any specific guidance on how to deal with mentally disordered people?  
Yes      No
9. While on division have you had to deal with a situation involving a mentally disordered person?  
Yes      No

If your answer is no, please see question 10

If your answer is yes, could you briefly describe the circumstances?

Do you feel that in dealing with this situation you were assisted by

(a) your training at college?

Yes      No

If yes, please could you explain a little further

(b) the guidance/instruction you received from fellow officers at your station?

Yes      No

If yes, please could you explain a little further.

10. Could you briefly indicate the different sorts of situations in which police officers have to deal with mentally disordered people?

### **DEFINING MENTAL DISORDER**

11. What is your understanding of the term mental disorder?

12. Please see attached sheet (I) on which is the answer from questionnaire 1 that you gave to the following question -

‘Which of the following states do you believe to be a mental disorder?’

Which of the following states do you *now* believe to be a mental disorder?

(underline as appropriate)

schizophrenia   alcoholism   amnesia   paranoia   stress   mental handicap  
drug addiction   autism   pre-menstrual syndrome   Alzheimer's disease   mania  
learning difficulty   personality disorder   epilepsy   anorexia nervosa  
psychopathy   dyslexia   depression   cerebral palsy   phobia

13. If your answer differs from that given in the first questionnaire -  
could you briefly explain the reason(s) why?

14. Please see attached sheet (II) on which is the answer from questionnaire 1 that you gave to the following question

‘Which of the following do you believe *may* be a sign that a person is mentally disordered?’ -

Which of the following do you *now* believe *may* be a sign that a person is mentally disordered?

(underline as appropriate)

verbally aggressive behaviour   inability to read   self-mutilation  
untruthfulness   mode of dress   restlessness   inability to write   drunkenness

attempted suicide    physically aggressive behaviour    facial expressions  
violence    does not answer questions    talkative    inconsistent statements  
anxiety

15. If your answer differs from that given in the first questionnaire -  
could you briefly explain the reason(s) why?
16. Please see attached sheet (III) on which is the answer from questionnaire 1 that  
you gave to the question  
'What types of criminal behaviour (if any) do you particularly associate with  
mentally disordered offenders?'
- What types of criminal behaviour (if any) do you *now* particularly associate with  
mentally disordered offenders?
- domestic assaults against partners    shoplifting    burglary    indecent assaults  
fraud    incest    domestic assaults against children    murder    possession of  
drugs    indecent assaults on children    damage to property    disorderly conduct  
in public    wounding    rape    drunk and disorderly conduct    begging
17. If your answer differs from that given in the first questionnaire -  
could you briefly explain the reason(s) why?

*Thank you for your co-operation in answering these questions and for your  
contribution to this research project.*

### **Police Questionnaire: Probationary Constables (III) (Final)**

1. Age?
2. Did you enter the police service as a cadet?  
Yes      No  
If yes, during the course of your training were you instructed in police powers in relation to the mentally disordered?  
Yes      No  
the different types of mental disorders and their symptoms?  
Yes      No

### **DEFINING MENTAL DISORDER**

3. What is your understanding of the term mental disorder?
4. Please see attached sheet (I) on which is the answer from questionnaire 1 that you gave to the following question -  
'Which of the following states do you believe to be a mental disorder?'  
Which of the following states do you *now* believe to be a mental disorder?  
(underline as appropriate)  
schizophrenia   alcoholism   amnesia   paranoia   stress   mental handicap  
drug addiction   autism   pre-menstrual syndrome   Alzheimer's disease   mania  
learning difficulty   personality disorder   epilepsy   anorexia nervosa  
psychopathy   dyslexia   depression   cerebral palsy   phobia
5. If your answer differs from that given in the first questionnaire -  
could you briefly explain the reason(s) why?
6. Please see attached sheet (II) on which is the answer from questionnaire 1 that you gave to the following question  
'Which of the following do you believe *may* be a sign that a person is mentally disordered?' -  
Which of the following do you *now* believe *may* be a sign that a person is mentally disordered?  
(underline as appropriate)  
verbally aggressive behaviour   inability to read   self-mutilation  
untruthfulness   mode of dress   restlessness   inability to write   drunkenness  
attempted suicide   physically aggressive behaviour   facial expressions  
violence   does not answer questions   talkative   inconsistent statements

anxiety

7. If your answer differs from that given in the first questionnaire - could you briefly explain the reason(s) why?
8. Please see attached sheet (III) on which is the answer from questionnaire 1 that you gave to the question  
'What types of criminal behaviour (if any) do you particularly associate with mentally disordered offenders?'
- What types of criminal behaviour (if any) do you *now* particularly associate with mentally disordered offenders?
- domestic assaults against partners   shoplifting
- burglary   indecent assaults   fraud   incest   domestic assaults against children
- murder   possession of drugs   indecent assaults on children   damage to property   disorderly conduct in public   wounding   rape   drunk and disorderly conduct   begging
9. If your answer differs from that given in the first questionnaire - could you briefly explain the reason(s) why?

#### **TRAINING - COLLEGE BASED**

10. Could you briefly describe the methods by which you were taught? (e.g. lectures, seminars, role play etc.)
11. During the course of your training at Headquarters, have you been instructed in the powers that the police have to deal with mentally disordered people?
- Yes      No
12. During the course of your training at the Regional Training Centre, have you been instructed in the powers that the police have to deal with mentally disordered people?
- Yes      No
- If the answer to one or both of the above is yes, can you briefly explain what these powers are?
13. During the course of your training at Headquarters, have you been taught about the different types of mental disorders and their symptoms?
- Yes      No
14. During the course of your training at the Regional Training Centre, have you been taught about the different types of mental disorders and their symptoms?



Yes      No

If the answer to either one or both of the above is yes, can you briefly explain what you were taught?

15. Has there been any input into this teaching by anyone other than a police officer?  
(e.g. someone with professional experience of mentally disordered people)

Yes      No

#### **PRACTICAL TRAINING - WITHIN THE DIVISION**

16. Could you briefly explain what form of instruction/ guidance/training you have received while working on your division?

17. Have you received any specific guidance on how to deal with mentally disordered people?

Yes      No

18. While on division have you had to deal with a situation involving a mentally disordered person?

Yes      No

If your answer is no, please see question 12

If your answer is yes, could you briefly describe the circumstances?

19. Do you feel that in dealing with this situation you were assisted by your training at college?

Yes      No

If yes, please could you explain a little further

- a) the guidance/instruction you received from fellow officers at your station?

Yes      No

If yes, please could you explain a little further.

20. Could you briefly indicate the different sorts of situations in which police officers have to deal with mentally disordered people?

*Thank you for your co-operation in answering these questions and for your contribution to this research project.*

### **Police Questionnaire: Probationary Constables (IV) (Final)**

1. During the course of your training at Headquarters, have you been instructed in the powers that the police have to deal with mentally disordered people?

Yes      No

2. During the course of your training at the Regional Training Centre, have you been instructed in the powers that the police have to deal with mentally disordered people?

Yes      No

If the answer to 1 and/or 2 above is yes, can you briefly explain what these powers are?

3. During the course of your training at Headquarters, have you been taught about the different types of mental disorders and their symptoms?

Yes      No

4. During the course of your training at the Regional Training Centre, have you been taught about the different types of mental disorders and their symptoms?

Yes      No

If the answer to either 3 and/or 4 above is yes, can you briefly explain what you were taught?

5. Has there been any input into this teaching by anyone other than a police officer? (e.g. someone with professional experience of mentally disordered people)

Yes      No

6. What is now your understanding of the term 'mental disorder'?

### **PRACTICAL TRAINING - WITHIN THE DIVISION**

7. Since you completed the interim questionnaire, have you received any specific guidance while on your division about how to deal with mentally disordered people?

Yes      No

8. Since you completed the interim questionnaire, while on division have you had to deal with a situation involving a mentally disordered person?

Yes      No

If your answer is no, please see question 12

If your answer is yes, could you briefly describe the circumstances?

- a) Do you feel that in dealing with this situation you were assisted by your

training at college?

Yes      No

If yes, please could you explain a little further

- b) the guidance/instruction you received from fellow officers at your station?

Yes      No

If yes, please could you explain a little further.

## **DEALING WITH ABNORMAL PEOPLE**

9. What options are open to you when a person in a public place is acting in a way that is abnormal? - e.g. in a way that is threatening or worrying to yourself/passers-by

10. What do you consider to be your priority (priorities) in such situations?

11. Could you give examples of the circumstances when you would use s136 of the Mental Health Act 1983 to remove someone to a place of safety?

12. Are there any circumstances under which you think you would use s136 rather than a power of arrest where the behaviour amounts to a criminal offence?

13. In your opinion, is a police station suitable for use as a place of safety?

Yes      No

Could you briefly indicate the reasons for your answer?

14. If you arrested a person whom you knew or suspected to be mentally disordered, what action would you take on arriving at the police station?

15. Do you believe that it is always necessary to charge mentally disordered people when they have committed a crime?

Yes      No

Please could you briefly indicate the reasons for your answer?

16. In your opinion, do you feel that your college - based training to date has equipped you to recognise and properly deal with mentally disordered people?

Yes      No

Could you indicate the reasons for your answer?

17. In your opinion, do you feel that your training on division to date has equipped you to recognise and properly deal with mentally disordered people?

Yes      No

Could you indicate the reasons for your answer?

18. Could you suggest any ways in which you feel that your training could be improved?

*Thank you for your co-operation in answering these questions and for your contribution to this research project.*

## **Crown Prosecutors Questionnaire**

### **1. PROFESSIONAL EXPERIENCE**

Position within the CPS?

Barrister or solicitor?

Length of service with CPS?

Prosecuting lawyer prior to joining CPS?

If so, how long?

Defence lawyer prior to joining CPS?

If so, how long?

Other professional experience than above?

### **2. DEFINING MENTAL DISORDER**

Have you any experience of mentally disordered people in any other than a professional capacity?

If so, in what capacity?

(e.g. member of family)

What is your understanding of the term 'mental disorder'?

Could you indicate what sort of behaviour or symptoms suggest to you that a person is mentally disordered?

### **3. ACQUIRING INFORMATION/READING REPORTS**

From what source(s) do you receive information on the psychiatric condition of the accused?

What form does this information take?

(e.g. medical reports)

Do you ever seek further psychiatric reports?

(If no, why not?)

If so, what sort of factors would necessitate further reports?

(e.g. where mental disorder is to be used as a defence?)

Do you ever seek psychiatric reports without previous indication from any other source that the accused is mentally disordered?

(If no, why not?)

If so, what factors are influential in your requesting these reports?

e.g. nature of the offence(s)?

circumstances/character of accused?

Are there any problems associated with psychiatric reports?

(e.g. delays in preparation; insufficient information?)

Are there any types of cases which cause you particular problems?

From your own experience, approximately what proportion of your caseload involves offenders who are psychiatrically diagnosed as mentally disordered?

Approximately what proportion do you think are mentally disordered?

(If there is a discrepancy between the two estimates - why?)

#### **4. PROSECUTION POLICY/INTER-AGENCY CO-OPERATION**

Where an accused person is mentally disordered, what formal/procedural courses of action are open to you?

e.g. discontinuance?

pre-trial negotiation?

Where an accused person is mentally disordered, is there any formal machinery for inter-agency co-operation?

e.g. police; probation; social work; defence lawyer; magistrates?

When you perceive an accused to be a 'mental health problem' are there any other informal/feasible options open to you?

(e.g. informal negotiation on diversion with other agency/agencies; negotiation on plea?)

In your opinion, is there a consensus throughout the criminal justice system that diversion of mentally disordered offenders is a priority?

Why do you think that mentally disordered offenders find their way into prison?

*Thank you for your co-operation in answering these questions and for your contribution to this research project.*

Department of Criminology  
University of Keele  
Keele  
Staffordshire  
ST5 5BG

Dear Sir/Madam,

Earlier this year, while on your training course at police headquarters in Stafford, you completed a questionnaire on the subject of the police and mentally disordered people. You kindly volunteered to complete a further questionnaire on the same subject when you had undergone further training and had received further professional experience at your police station.

I would be extremely grateful if you could complete the enclosed questionnaire, as honestly and in as much detail as you feel able, and return it to me in the stamped addressed envelope provided.

During the course of your final training at headquarters in September of this year I hope that you will agree to complete a further and final questionnaire, again involving the same subject matter. Your contribution to an investigation of the way in which police officers identify and deal with mentally disordered offenders and non-offenders and the impact of training on this process is invaluable.

Thank you for your co-operation.

Yours Sincerely

Hillary Bradshaw

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## STATUTES

MENTAL HEALTH ACT 1983

POLICE AND CRIMINAL EVIDENCE ACT 1984

PROSECUTION OF OFFENCES ACT 1986